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DONALD J. TRUMP,
Plaintiff/Appellant,
v.
TIMOTHY L. O'BRIEN; TIME
WARNER BOOK GROUP, INC.; and
WARNER BOOKS, INC.,
Defendants/Respondents.

) SUPERIOR COURT OF NEW JERSEY
) APPELLATE DIVISION
) DOCKET NO.: A-6141-08T3
)
) ON APPEAL FROM THE
) SUPERIOR COURT OF NEW JERSEY
) LAW DIVISION - CAMDEN COUNTY
)
) SAT BELOW
) HONORABLE MICHELE M. FOX, J.S.C.
)
)

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APPENDIX TO BRIEF OF PLAINTIFF/APPELLANT DONALD J. TRUMP
Volume IV
Pa1082-Pa1447

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Exhibit BH-Omitted, duplicate of 900a-919a Plaintiff's First Set of Interrogatories to Defendant Timothy L. O'Brien,	***
Omitted, duplicate of 920a-935a Plaintiff's First Request to Defendant Timothy L. O'Brien for the Production of Documents	***
Plaintiff's First Set of Interrogatories to Defendant Warner Books	2562a
Omitted, duplicate of 920a-935a Plaintiff's First Request to Defendant Timothy L. O'Brien for the Production of Documents	***
Plaintiff's First Set of Interrogatories to Defendant Time Warner Book Group, Inc.	2578a

Omitted, duplicate of 936a-950a
Plaintiff's First Request to Defendant Time
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Plaintiff's First Request to Defendant Warner Books,
Inc. for the Production of Documents 2594a

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Timothy L. O'Brien's Responses and Objections to
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Exhibit BJ

Time Warner Book Group Inc.'s and Warner Book, Inc.'s
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Timothy L. O'Brien's Responses and Objections
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Time Warner Book Group Inc.'s and Warner Books, Inc.'s
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Dated September 8, 2006 2713a

Exhibit BM

Defendants' privilege log and redaction log,
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Exhibit BN-Omitted, duplicate of 951a-953a

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fees and disbursements, of, or incidental to, this Assignment or in any way relating to the enforcement, protection or preservation of the rights or remedies of Lender under this Assignment or any other Loan Document.

(e) Further Assurances. Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created or now or hereafter intended to be created under this Assignment and the other Loan Documents and any security interest created or purported to be created thereunder, to protect and further the validity, priority and enforceability of this Assignment and the other Loan Documents, to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents, or otherwise carry out the purposes of the Loan Documents and the transactions contemplated thereunder.

(f) Notices. Any notice, election, request or demand which by any provision of this Assignment is required or permitted to be given or served hereunder shall be in the manner required for the delivery of notices pursuant to the Loan Agreement.

(g) Entire Agreement. This Assignment and the Loan Documents constitute the entire and final agreement between Borrower and Lender with respect to the subject matter hereof and may only be changed, amended, modified or waived by an instrument in writing signed by Borrower and Lender.

(h) No Waiver. No waiver of any term or condition of this Assignment, whether by delay, omission or otherwise, shall be effective unless in writing and signed by the party sought to be charged, and then such waiver shall be effective only in the specific instance and for the purpose for which given. No notice to, or demand on, Borrower shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances. A waiver of one event shall not be construed as continuing or as a bar to or waiver of any right or remedy to a subsequent event. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Lender of any of Lender's rights and remedies under any other Loan Document. This Assignment is made and accepted without prejudice to any of such rights and remedies possessed by Lender to collect the Obligations or any amounts secured hereby and to enforce any other security therefor held by it, and said rights and remedies may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

(i) Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and permitted assigns.

(j) Captions. All paragraph, section, exhibit and schedule headings and captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Assignment.

(k) Severability. The provisions of this Assignment are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such

invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Assignment.

(l) GOVERNING LAW. THIS ASSIGNMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CHOICE OF LAW RULES APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THE STATE OF NEW YORK AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS, THE ASSIGNMENT OF LEASES, RENTS, AND SECURITY DEPOSITS CREATED OR PROVIDED HEREIN AND COMPLIANCE OF THE PROPERTY AND THE PROPOSED CONDOMINIUM WITH LAWS, RULES REGULATIONS AND ORDINANCES OF STATE AND LOCAL GOVERNMENTAL BODIES SHALL BE GOVERNED BY THE LAWS OF THE STATE OR, IF APPLICABLE, THE MUNICIPALITY, IN WHICH THE PROPERTY IS LOCATED. BORROWER AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS ASSIGNMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND THE SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON BORROWER IN THE MANNER AND AT THE ADDRESS SPECIFIED FOR NOTICES IN THE SECURITY INSTRUMENT. BORROWER HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT COURT.

(m) JURY TRIAL WAIVER. BORROWER AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER IT, HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS ASSIGNMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS ASSIGNMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND BORROWER HEREBY AGREES AND CONSENTS THAT AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT HERETO TO THE WAIVER OF ANY RIGHT TO TRIAL BY JURY. BORROWER ACKNOWLEDGES THAT IT HAS CONSULTED WITH LEGAL COUNSEL REGARDING THE MEANING OF THIS WAIVER AND ACKNOWLEDGES THAT THIS WAIVER IS AN ESSENTIAL INDUCEMENT FOR THE MAKING OF THE LOAN. THIS WAIVER SHALL SURVIVE THE REPAYMENT OF THE LOAN.

(n) Counterclaims and other Actions. Borrower hereby expressly and unconditionally waives, in connection with any suit, action or proceeding brought by Lender on this Assignment, any and every right it may have to (i) interpose any counterclaim therein (other than a counterclaim which can only be asserted in the suit, action or proceeding brought by Lender on this Assignment and cannot be maintained in a separate action) and (ii) have any such suit, action or proceeding consolidated with any other or separate suit, action or proceeding.

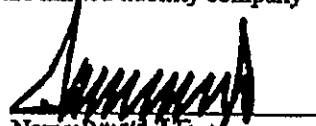
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IN WITNESS WHEREOF, Borrower has duly executed this Assignment of Leases, Rents, and Security Deposits as of the date first hereinabove written.

BORROWER:

401 NORTH WABASH VENTURE LLC, a
Delaware limited liability company

By:


Name: Donald J. Jones
Title: President

Assignment of Lease Execution

STATE OF NY)
COUNTY OF NY) ss.:

I, LINDA BOHDAN, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT THE PRESIDENT of 401 NORTH WABASH VENTURE LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such DONALD J. TRUMP appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary acts and as the free and voluntary act of said limited liability company.

GIVEN under my hand and notarial seal this 12 day of October, 2004.

Linda Bohdan
Notary Public

My Commission Expires:

LINDA BOHDAN
Notary Public, State of New York
No. 41-490348
Qualified in Queens County
Commission Expires August 24, 20 05

Assignment of Lease Execution

EXHIBIT A

Legal Description

PARCEL 1:

A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH, 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF SAID PARCEL 17 A DISTANCE OF 272.18 FEET;

THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF PARCEL 17 A DISTANCE OF 22.62 FEET TO A POINT;

THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST, A DISTANCE OF 3.97 FEET TO A POINT;

THENCE CONTINUING SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST, A DISTANCE OF 43.72 FEET;

THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST, A DISTANCE OF 43.85 FEET;

THENCE SOUTH 52 DEGREES 21 MINUTES 58 SECONDS WEST; A DISTANCE OF 32.82 FEET;

THENCE SOUTH 49 DEGREES 32 MINUTES 01 SECOND WEST, A DISTANCE OF 32.53 FEET;

THENCE SOUTH 47 DEGREES 37 MINUTES 29 SECONDS WEST, A DISTANCE OF 51.47 FEET;

THENCE SOUTH 47 DEGREES 01 MINUTE 53 SECONDS WEST, A DISTANCE OF 2.033 FEET;

THENCE SOUTH 47 DEGREES 48 MINUTES 32 SECONDS WEST, A DISTANCE OF 42.61 FEET;

THENCE SOUTH 49 DEGREES 17 MINUTES 23 SECONDS WEST, A DISTANCE OF 44.057 FEET;

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THENCE SOUTH 53 DEGREES 26 MINUTES 39 SECONDS WEST, A DISTANCE OF 24.308 FEET;

THENCE SOUTH 00 DEGREES 09 MINUTES 40 SECONDS WEST, A DISTANCE OF 116.60 FEET;

THENCE SOUTH 22 DEGREES 24 MINUTES 30 SECONDS EAST, A DISTANCE OF 34.47 FEET;

THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST, A DISTANCE OF 105.06 FEET;

THENCE SOUTH 39 DEGREES 30 MINUTES 25 SECONDS EAST, A DISTANCE OF 46.62 FEET TO A POINT ON THE NORTHERLY DOCK LINE OF THE CHICAGO RIVER;

THENCE NORTH 48 DEGREES 44 MINUTES 55 SECONDS EAST, A DISTANCE OF 401.26 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO AN ANGLE POINT IN SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER;

THENCE NORTH 62 DEGREES 25 MINUTES 37 SECONDS EAST, A DISTANCE OF 100.55 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO A POINT ON THE WEST LINE OF NORTH RUSH STREET;

THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST, A DISTANCE OF 104.51 FEET ALONG THE WEST LINE OF NORTH RUSH STREET TO THE POINT OF BEGINNING, ALL IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS.

PARCEL 2:

ALL THE LAND, PROPERTY AND SPACE LYING ABOVE A HORIZONTAL PLANE WHICH IS 22.00 FEET ABOVE THE CHICAGO CITY DATUM AND BELOW A HORIZONTAL PLANE WHICH IS 150 FEET ABOVE THE CHICAGO CITY DATUM, AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BEING THAT PART OF EAST NORTH WATER STREET, EAST KINZIE STREET AND NORTH WABASH AVENUE BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, SAID SOUTH LINE OF EAST NORTH WATER STREET BEING ALSO THE NORTH LINE OF A PARCEL OF LAND DENOTED AS

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PARCEL 17 IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER AT NORTH WABASH AVENUE" PASSED BY THE CHICAGO CITY COUNCIL JULY 29, 1930, A DISTANCE OF 213.34 FEET TO THE POINT OF BEGINNING FOR THE PARCEL OF LAND HEREINAFTER DESCRIBED;

THENCE CONTINUING SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 58.74 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL 17, SAID POINT BEING ALSO THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE;

THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE, SAID SOUTHEASTERLY RIGHT OF WAY LINE BEING ALSO THE NORTHWESTERLY LINE OF AFORESAID PARCEL 17, A DISTANCE OF 22.62 FEET TO A POINT;

THENCE SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 18.45 FEET TO A POINT;

THENCE NORTHERLY, NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG THE ARC OF A CIRCLE WHICH HAS A RADIUS OF 50.00 FEET, A CHORD OF 94.53 FEET AND A CHORD BEARING OF NORTH 64 DEGREES 20 MINUTES 45 SECONDS EAST, AN ARC DISTANCE OF 123.85 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

NON-EXCLUSIVE EASEMENTS IN FAVOR OF PARCELS 1 AND 2, AS GRANTED IN THAT CERTAIN ORDINANCE BY THE CITY OF CHICAGO APPROVED SEPTEMBER 1, 2004 AS PUBLISHED IN JOURNAL PAGES 30411 TO 30458, BOTH INCLUSIVE, FOR THE IMPROVEMENT, USE AND MAINTENANCE OF PUBLIC WAYS, TO IMPROVE, MAINTAIN, REPAIR, REPLACE, USE AND OCCUPY FOR PEDESTRIAN PURPOSES, AND NOT VEHICULAR PURPOSES, THE FOLLOWING TRACTS OF LAND:

(A) NORTH WATER STREET PEDESTRIAN EASEMENT

ALL THE LAND, SPACE AND IMPROVEMENTS, AS DESCRIBED IN SAID ORDINANCE, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 22.00 FEET ABOVE THE CHICAGO CITY DATUM AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COMPRISING PARTS OF WATER LOTS 16 AND 17 AND A PORTION OF EAST NORTH WATER STREET, NORTH RUSH STREET, ORIGINAL EAST KINZIE STREET AND PART OF LOT 14 IN BLOCK 2 IN KINZIE'S ADDITION, WHICH TRACT OF LAND IS

MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF PARCEL 17 AS ESTABLISHED IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER AT NORTH WABASH AVENUE" PASSED BY THE CHICAGO CITY COUNCIL JULY 29, 1930, A DISTANCE OF 213.34 FEET TO A POINT; THENCE NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE NORTH, HAVING A RADIUS OF 50.00 FEET, A CHORD DISTANCE OF 94.53 FEET AND A CHORD BEARING OF SOUTH 64 DEGREES 20 MINUTES 45 SECONDS WEST, AN ARC DISTANCE OF 123.85 FEET TO A POINT; THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 29.24 FEET TO A POINT; THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 24.79 FEET TO A POINT; THENCE NORTH 32 DEGREES 10 MINUTES 50 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 16.87 FEET TO A POINT; THENCE NORTHERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE EAST, HAVING A RADIUS OF 240.67 FEET, WITH A CHORD DISTANCE OF 70.72 FEET AND A CHORD BEARING OF NORTH 23 DEGREES 43 MINUTES 54 SECONDS EAST, AN ARC DISTANCE OF 70.98 FEET TO A POINT; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE PARALLEL WITH THE NORTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 94.61 FEET TO A POINT; THENCE NORTHEASTERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE SOUTHEAST, HAVING A RADIUS OF 52.64 FEET, WITH A CHORD DISTANCE OF 46.28 FEET AND A CHORD BEARING OF NORTH 51 DEGREES 59 MINUTES 36 SECONDS EAST, AN ARC DISTANCE OF 47.92 FEET TO A POINT; THENCE NORTH 25 DEGREES 34 MINUTES 12 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 5.53 FEET TO A POINT ON THE NORTH LINE OF EAST NORTH WATER STREET; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG THE NORTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 242.76 FEET TO A POINT; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 55.18 FEET TO A POINT ON THE SOUTH LINE OF SAID EAST NORTH WATER STREET; THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG SAID SOUTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 14.61 FEET TO A POINT; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 67.16 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 13.93 FEET TO A POINT ON THE EAST LINE OF NORTH RUSH STREET; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG SAID EAST LINE OF NORTH RUSH STREET, A DISTANCE OF 23.40 FEET TO A POINT; THENCE SOUTH 67 DEGREES 58 MINUTES 54 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 59.14 FEET TO A POINT; THENCE SOUTH 62 DEGREES 22 MINUTES 39

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SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 12.78 FEET TO A POINT ON THE WEST LINE OF SAID NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST ALONG SAID WEST LINE OF NORTH RUSH STREET, A DISTANCE OF 108.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

(B) NORTH RUSH STREET PEDESTRIAN EASEMENT

ALL THE LAND, SPACE AND IMPROVEMENTS, AS DESCRIBED IN SAID ORDINANCE, LYING BELOW A HORIZONTAL PLANE WHICH IS 22.00 FEET ABOVE THE CHICAGO CITY DATUM, AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BEING THAT PART OF NORTH RUSH STREET BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET EXTENDED, A DISTANCE OF 52.84 FEET TO A POINT; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 67.16 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 13.93 FEET TO A POINT ON THE EAST LINE OF NORTH RUSH STREET; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG SAID EAST LINE OF NORTH RUSH STREET, A DISTANCE OF 23.40 FEET TO A POINT; THENCE SOUTH 67 DEGREES 58 MINUTES 54 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 59.14 FEET TO A POINT; THENCE SOUTH 62 DEGREES 22 MINUTES 39 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 12.78 FEET TO A POINT ON THE WEST LINE OF SAID NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST ALONG SAID WEST LINE OF NORTH RUSH STREET, A DISTANCE OF 108.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY



Doc#: 0429339102
 Eugene "Gene" Moore Fee: \$42.00
 Cook County Recorder of Deeds
 Date: 10/19/2004 01:42 PM Pg: 1 of 10

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

82257902 607

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
401 NORTH WABASH VENTURE LLC

OR

1b. INDIVIDUAL'S LAST NAME

1c. MAILING ADDRESS
C/O THE TRUMP ORGANIZATION, *

1d. SEE INSTRUCTIONS

1d. ADD. INFO FOR ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION LLC	1f. JURISDICTION OF ORGANIZATION DELAWARE	1g. ORGANIZATION'S STATE	1h. COUNTRY USA
			STATE NY	POSTAL CODE 10022

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME

2c. MAILING ADDRESS

2d. SEE INSTRUCTIONS

2d. ADD. INFO FOR ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATION'S STATE	2h. COUNTRY
			STATE NY	POSTAL CODE 10020

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR (S)) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
FORTRESS CREDIT CORP.

OR

3b. INDIVIDUAL'S LAST NAME

3c. MAILING ADDRESS
1251 AVENUE OF THE AMERICAS, **

3d. SEE INSTRUCTIONS

3d. ADD. INFO FOR ORGANIZATION DEBTOR	3e. TYPE OF ORGANIZATION	3f. JURISDICTION OF ORGANIZATION	3g. ORGANIZATION'S STATE	3h. COUNTRY
			STATE NY	POSTAL CODE 10020

4. This FINANCING STATEMENT covers the following collateral:
SEE EXHIBIT A WHICH IS ATTACHED HERETO, WHICH IS MADE A PART HEREOF.

5. ALTERNATIVE DESIGNATION (if applicable): LESSOR/LESSOR CONFINEMENT CONDITIONOR SALES/SALEOR BELLER/BUYER AGL LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be used (or recorded) in the REAL ESTATE DIVISION. Check to FILE BY SEARCH REPORT (or DEPOSIT) All Debtors Debtor 1 Debtor 2

7. OPTIONAL FILER REFERENCE DATA

ILLINOIS, COOK COUNTY

424407

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/22/03)

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

1a. ORGANIZATION'S NAME 401 NORTH WABASH VENTURE LLC			
OR	1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

* 725 FIFTH AVENUE

** 16TH FLOOR

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only (see name (11a or 11b) - do not abbreviate or combine names)

11a. ORGANIZATION'S NAME					
OR	11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
11d. SEE INSTRUCTIONS	ADD. INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any	<input type="checkbox"/> NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR'S NAME - insert only (see name (12a or 12b))

12a. ORGANIZATION'S NAME					
OR	12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
12c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

13. This FINANCING STATEMENT covers timber to be cut or ge-synthetic collateral, or is filed as a future filing.
14. Description of real estate:

**SEE EXHIBIT B ATTACHED HERETO,
WHICH IS MADE A PART HEREOF.**

15. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.

Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check only if applicable and check only one box.

Debtor is a TRANSMITTING UTILITY

Filed in connection with a Manufactured Home Transaction - effective 30 years

Filed in connection with a Public Finance Transaction - effective 30 years

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC1Ad) (REV. 07/2006)

EXHIBIT A TO UCC FINANCING STATEMENT

Debtor:	Secured Party:
401 North Wabash Venture LLC c/o The Trump Organization 725 Fifth Avenue New York, New York 10022	Fortress Credit Corp. 1251 Avenue of the Americas 16 th Floor New York, New York 10020

DESCRIPTION OF COLLATERAL

All of Debtor's estate, right, title and interest now owned or hereafter acquired in, to and under any and all the property (collectively, the "Property") described below:

- (1) the Land;
- (2) all additional lands, estates and development rights hereafter acquired by Debtor for use in connection with the Land and all additional lands and estates therein which may, from time to time, by supplemental security instrument or otherwise, be expressly made subject to the lien of the Security Instrument;
- (3) all of Debtor's right, title and interest in and to the buildings, foundations, structures, improvements and fixtures now or hereafter located or erected on the Land (the "Improvements");
- (4) all of Debtor's right, title and interest in and to (i) all streets, avenues, roads, alleys, passages, places, sidewalks, strips and gores of land and ways, existing or proposed, public or private, adjacent to the Land, and all reversionary rights with respect to the vacation of said streets, avenues, roads, alleys, passages, places, sidewalks and ways in the land lying thereunder; (ii) all air, light, lateral support, development, drainage, oil, gas and mineral rights, options to purchase or lease, waters, water courses and riparian rights now or hereafter pertaining to or used in connection with the Land and/or the Improvements; (iii) all and singular, the tenements, hereditaments, rights of way, easements, appendages and appurtenances and property now or hereafter belonging or in any way appertaining to the Land and/or the Improvements; and (iv) all estate, right, title, claim or demand whatsoever, either at law or in equity, in possession or expectancy, of, in and to the Land and/or the Improvements (collectively, the "Appurtenances" and together with the Land and the Improvements, the "Real Property");
- (5) all of Debtor's right, title and interest in and to the machinery, appliances, apparatus, equipment, fittings, fixtures, materials, articles of personal property and goods of every kind and nature whatsoever used in connection with the Real Property and all additions to and renewals and replacements thereof, and all substitutions therefor, now or hereafter affixed to, attached to, placed upon or located upon or in the Real Property, or any part thereof, and used in connection with the use, ownership, management, maintenance, enjoyment or operation of the Property in any present or future occupancy or use thereof and now owned or leased or hereafter owned or leased by Debtor, including, but without limiting the generality of the foregoing, all heating, lighting, laundry, cooking, incinerating, loading, unloading and power equipment, boilers, dy-

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namos, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus, air cooling and air conditioning apparatus, building materials and equipment, elevators, escalators, carpeting, shades, draperies, awnings, screens, doors and windows, blinds, furnishings (other than equipment and personal property of tenants or guests of the Real Property, or any part thereof);

(6) all of Debtor's right, title and interest as lessor or licensor, as the case may be, in, to and under all leases, subleases, underlettings, concession agreements and licenses of the Real Property or any part thereof, now existing or hereafter entered into by Debtor (collectively, "Leases") including, without limitation, any cash and other securities deposited thereunder, the grant of such cash and securities hereunder being expressly subject to the provisions of the applicable Leases and all of Debtor's right, title and interest, subject to the provisions of Section 5 to the Security Instrument, in the right to receive and collect the revenues, income, rents, issues, profits, royalties and other benefits payable under any of the Leases (collectively, "Rents") and all revenues, income, rents, issues and profits otherwise arising from the use or enjoyment of all or any portion of the Real Property;

(7) all of Debtor's right, title and interest in and to all proceeds, judgments, claims, compensation, awards or payments hereafter made to Debtor for the taking, whether permanent or temporary, by condemnation, eminent domain, or for any conveyance made in lieu of such taking, of the whole or any part of the Real Property, including, without limitation, all proceeds, judgments, claims, compensation awards or payments for changes of grade of streets or any other injury to or decrease in the value of the Real Property, whether direct or consequential, which awards and payments are hereby assigned to Secured Party;

(8) all of Debtor's right, title and interest in and to all unearned premiums paid under insurance policies now or hereafter obtained by Debtor to the extent the same insure the Real Property and any other insurance policies required to be maintained pursuant to the Loan Agreement to the extent the same insure the Property or otherwise relate thereto, including, without limitation, liability insurance policies and Debtor's interest in and to all proceeds of the conversion and the interest payable thereon, voluntary or involuntary, of the Real Property, or any part thereof, into cash or liquidated claims including, without limitation, proceeds of casualty insurance, title insurance or any other insurance maintained on or with respect to the Real Property (other than liability insurance);

(9) all right, title and interest of Debtor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Land, hereafter acquired by or released to Debtor or constructed, assembled or placed by Debtor on the Land, and all conversions of the security constituted thereby;

(10) all of Debtor's right, title and interest in, to and under, to the extent the same may be encumbered or assigned by Debtor pursuant to the terms thereof without occurrence of a breach or default thereunder and without impairment of the validity or enforceability thereof and to the extent permitted by applicable law, (i) any and all contracts and agreements relating to the Real Property (other than the Leases), and other documents, books and records related to the ownership and operation of the Real Property, including, without limitation all Material Agree-

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ments (as defined in the Loan Agreement); (ii) to the extent permitted by law, all Licenses (as defined in the Loan Agreement), warranties, guaranties, building permits and government approvals relating to or required for the construction, completion, occupancy and operation of the Real Property; (iii) all plans and specifications for the construction of the Real Property, including, without limitation, installations of curbs, sidewalks, gutters, landscaping, utility connections and all fixtures and equipment necessary for the construction, operation and occupancy of the Real Property; and (iv) all such other contracts and agreements (other than the Leases) from time to time executed by Debtor relating to the ownership, leasing, construction, maintenance, operation, occupancy or sale of the Real Property, together with all rights of Debtor to compel performance of the terms of such contracts and agreements;

(11) to the extent the same may be encumbered or assigned by Debtor pursuant to the terms thereof and to the extent permitted by law, all of Debtor's right, title and interest in, to and under documents, instruments, and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code as in effect in the State in which the Real Property is located (the "UCC"), and credit card receivables and escrows, in any case which now or hereafter relate to, are derived from, or are used in connection with the Real Property, and all contract rights, franchises, books, records, plans, specifications, Licenses, actions and causes of action which now or hereafter relate to, are derived from or used in connection with the Real Property or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon;

(12) all of Debtor's right, title and interest in all proceeds, both cash and noncash, of the foregoing which may be sold or otherwise be disposed of pursuant to the terms hereof; and

(13) all right, title and interest of Debtor as declarant and/or developer under any existing and future condominium documents, or master association or community association documents with respect to the Property or any portion thereof.

Definitions.

"Land": Shall mean the real property described on Exhibit B attached hereto and hereby made a part hereof.

"Loan Agreement": Shall mean that certain Loan and Security Agreement, dated as of the date of the Security Instrument (as the same may be amended, supplemented, replaced or otherwise modified from time to time), between the Secured Party and the Debtor..

"Security Instrument": Shall shall mean that certain Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents and Security Deposits, dated as of October [-], 2004 (as amended, supplemented, replaced or otherwise modified from time to time), by the Debtor in favor of the Secured Party.

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EXHIBIT B

LEGAL DESCRIPTION

PARCEL 1:

A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH, 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF SAID PARCEL 17 A DISTANCE OF 272.18 FEET;

THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF PARCEL 17 A DISTANCE OF 22.62 FEET TO A POINT;

THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST, A DISTANCE OF 3.97 FEET TO A POINT;

THENCE CONTINUING SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST, A DISTANCE OF 43.72 FEET;

THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST, A DISTANCE OF 43.85 FEET;

THENCE SOUTH 52 DEGREES 21 MINUTES 58 SECONDS WEST; A DISTANCE OF 32.82 FEET;

THENCE SOUTH 49 DEGREES 32 MINUTES 01 SECOND WEST, A DISTANCE OF 32.53 FEET;

THENCE SOUTH 47 DEGREES 37 MINUTES 29 SECONDS WEST, A DISTANCE OF 51.47 FEET;

THENCE SOUTH 47 DEGREES 01 MINUTE 53 SECONDS WEST, A DISTANCE OF 2.033 FEET;

THENCE SOUTH 47 DEGREES 48 MINUTES 32 SECONDS WEST, A DISTANCE OF 42.61 FEET;

THENCE SOUTH 49 DEGREES 17 MINUTES 23 SECONDS WEST, A DISTANCE OF 44.057 FEET;

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2002-04-05 11:58:56
Cook County Recorder 13.55



**MEMORANDUM
OF OPTION**

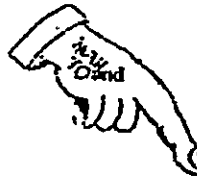
THIS MEMORANDUM is made this 22nd day of May, 2002 by and among CST Member LLC, a Delaware limited liability company ("CST Member"), Chicago Sun-Times, Inc., a Delaware corporation ("CST Inc."), and Trump Chicago Managing Member LLC, a Delaware limited liability company ("Trump").

1. CST Member, Trump and Trump Chicago Member LLC, a Delaware limited liability company entered into that certain Operating Agreement of 401 North Wabash Venture LLC dated May 22, 2002 (the "Operating Agreement") pursuant to which CST Member and CST Inc. granted to Trump an option (the "Option") to purchase that certain real property in Cook County, Illinois described on Exhibit A attached hereto and made a part hereof, (the "Property"). The Property is owned as of the date hereof by CST Inc. and may hereafter be conveyed to an affiliate which affiliate shall be bound to perform the obligation of CST Member and CST Inc. with respect to the Option.
2. This Memorandum is made for recording purposes only to give notice to all third parties of the Option in favor of Trump. This Memorandum shall not be construed to amend or in any way modify the terms of the Operating Agreement, and the terms of said Operating Agreement shall govern.

[SIGNATURE PAGE FOLLOWS]

This Document Prepared By:

Sandra Y. Kellman, Esq.
Fiper Marbury Rudnick & Wolfe
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601



After Recording Return To:

Jay A. Neveloff
Kramer Levin Nafstalis & Frankel LLP
919 Third Avenue
New York, NY 10022

20627917

IN WITNESS WHEREOF, the parties have executed this Memorandum as of this day
of May 22, 2002.

CST Member, LLC, a Delaware limited liability
company

By: Chicago Sun-Times Inc., a Delaware
corporation, the Sole Member

By: 
Name: Mark Kipnis
Its: Vice President

CHICAGO SUN-TIMES, INC., a Delaware
corporation

By: 
Name: Mark Kipnis
Its: Vice President

TRUMP CHICAGO MANAGING MEMBER
LLC, a Delaware limited liability company

By: 
Name: Donald J. Trump
Its: Sole Member

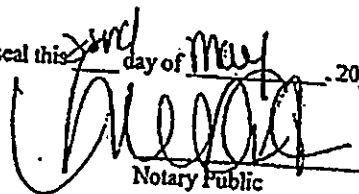
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STATE OF New York
COUNTY OF New York) SS.

I, Meredith H. Rubin a Notary Public in and for said County in the State of New York do hereby certify that Mark Kipnis of CST Member LLC, a limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such respective officer, appeared before me this day in person and acknowledged that he signed and delivered such instrument as his own free and voluntary acts and as the free and voluntary act of said limited liability company, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 2nd day of May, 2002


Notary Public

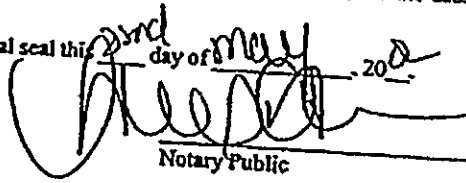
My Commission expires:

MEREDITH H. RUBIN
NOTARY PUBLIC, State of New York
No. 018U4804022
Qualified in Nassau County
Commission Expires Dec. 31, 2002

STATE OF New York
COUNTY OF New York) SS.

I, Meredith H. Rubin a Notary Public in and for said County in the State of New York do hereby certify that Mark Kipnis of Chicago Sun-Times, Inc., a corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such respective officer, appeared before me this day in person and acknowledged that he signed and delivered such instrument as his own free and voluntary acts and as the free and voluntary act of said corporation, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 2nd day of May, 2002


Notary Public

My Commission expires:

MEREDITH H. RUBIN
NOTARY PUBLIC, State of New York
No. 018U4804022
Qualified in Nassau County
Commission Expires Dec. 31, 2002

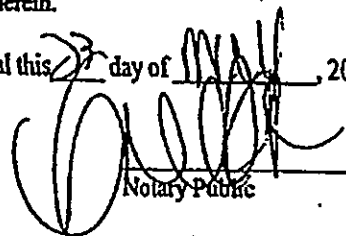
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STATE OF NY
COUNTY OF NY) SS.

I, Meredith H. Gresh, a Notary Public in and for said County in the State aforesaid, do hereby certify that Donald J. Trump of Trump Chicago Managing Member LLC, a limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such respective officer, appeared before me this day in person and acknowledged that he signed and delivered such instrument as his own free and voluntary acts and as the free and voluntary act of said company, for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal this 23 day of March, 20 .



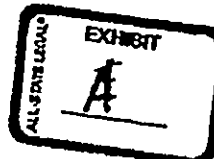
Notary Public

My Commission expires:

MEREDITH H. GRESH
NOTARY PUBLIC, State of New York
No. 01281423
Qualified in Nassau County
Commission Expires Dec. 31, 20

20627917

CHICAGO TITLE INSURANCE COMPANY
COMMITMENT FOR TITLE INSURANCE
SCHEDULE A (CONTINUED)



ORDER NO.: 1401 007954339 02

5. THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:

A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955; THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF SAID PARCEL 17 A DISTANCE OF 272.18 FEET; THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF PARCEL 17, A DISTANCE OF 22.62 FEET TO A POINT; THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST, A DISTANCE OF 3.97 FEET TO A POINT; THENCE CONTINUING SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST, A DISTANCE OF 43.22 FEET; THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST, A DISTANCE OF 43.85 FEET; THENCE SOUTH 62 DEGREES 21 MINUTES 59 SECONDS WEST, A DISTANCE OF 32.82 FEET; THENCE SOUTH 49 DEGREES 32 MINUTES 01 SECOND WEST, A DISTANCE OF 51.47 FEET; THENCE SOUTH 47 DEGREES 37 MINUTES 29 SECONDS WEST, A DISTANCE OF 2.03 FEET; THENCE SOUTH 47 DEGREES 01 MINUTES 53 SECONDS WEST, A DISTANCE OF 42.61 FEET; THENCE SOUTH 49 DEGREES 48 MINUTES 32 SECONDS WEST, A DISTANCE OF 44.057 FEET; THENCE SOUTH 53 DEGREES 17 MINUTES 23 SECONDS WEST, A DISTANCE OF 24.308 FEET; THENCE SOUTH 00 DEGREES 26 MINUTES 39 SECONDS WEST, A DISTANCE OF 116.80 FEET; THENCE SOUTH 02 DEGREES 09 MINUTES 40 SECONDS WEST, A DISTANCE OF 24.47 FEET; THENCE NORTH 07 DEGREES 24 MINUTES 30 SECONDS EAST, A DISTANCE OF 105.05 FEET; THENCE NORTH 30 DEGREES 35 MINUTES 30 SECONDS EAST, A DISTANCE OF 48.82 FEET TO A POINT ON THE DEGREES 30 MINUTES 25 SECONDS EAST, A DISTANCE OF 104.51 FEET; THENCE NORTH 02 SECONDS EAST, A DISTANCE OF 401.26 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER; THENCE NORTH 40 DEGREES 44 MINUTES 55 SECONDS EAST, A DISTANCE OF 100.55 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO A POINT ON THE WEST LINE OF NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST, A DISTANCE OF 104.51 FEET ALONG THE WEST LINE OF NORTH RUSH STREET TO THE POINT OF BEGINNING, ALL IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS.

SECT 10

PAGE 4-

PQ



Doc#: 0429339103
Eugene "Gene" Moore Fee: \$48.00
Cook County Recorder of Deeds
Date: 10/19/2004 01:43 PM Pg: 1 of 13

THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:

Marian P. Wexler, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
333 W. Wacker Drive
Chicago, Illinois 60606

MEMORANDUM OF OPTION

THIS MEMORANDUM OF OPTION is made as of the 15 day of October, 2004, by and among 401 NORTH WABASH VENTURE LLC, a Delaware limited liability company (the "Land Company"), 401 MEZZ VENTURE LLC, a Delaware limited liability company (the "Mezzanine Company," and collectively with the Land Company and together with their respective successors and assigns, the "Company"), each having an office c/o The Trump Organization, 725 Fifth Avenue, New York, New York 10022; and FORTRESS CREDIT CORP., a Delaware corporation (together with its successors and assigns, "Fortress"), having an address at 1251 Avenue of the Americas, 16th Floor, New York, New York 10020.

BACKGROUND

WHEREAS, the Land Company is the record owner of that certain real property located in Cook County, Illinois and described on Exhibit A attached hereto and made a part hereof (the "Property");

WHEREAS, Land Company and Fortress have entered into that certain Loan and Security Agreement dated as of the date hereof (as the same may be amended, replaced, supplemented or otherwise modified from time to time, the "Land Loan Agreement"), between Fortress, as lender, and the Land Company, as borrower, whereby Fortress made a loan to the Land Company in the principal amount of \$104,000,000 (the "Land Loan"), which Land Loan is secured by, inter alia, that certain Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents and Security Deposits, dated as of the date hereof, encumbering the Property;

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THENCE SOUTH 53 DEGREES 26 MINUTES 39 SECONDS WEST, A DISTANCE OF 24.308 FEET;

THENCE SOUTH 00 DEGREES 09 MINUTES 40 SECONDS WEST, A DISTANCE OF 116.60 FEET;

THENCE SOUTH 22 DEGREES 24 MINUTES 30 SECONDS EAST, A DISTANCE OF 34.47 FEET;

THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST, A DISTANCE OF 105.06 FEET;

THENCE SOUTH 39 DEGREES 30 MINUTES 25 SECONDS EAST, A DISTANCE OF 46.62 FEET TO A POINT ON THE NORTHERLY DOCK LINE OF THE CHICAGO RIVER;

THENCE NORTH 48 DEGREES 44 MINUTES 55 SECONDS EAST, A DISTANCE OF 401.26 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO AN ANGLE POINT IN SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER;

THENCE NORTH 62 DEGREES 25 MINUTES 37 SECONDS EAST, A DISTANCE OF 100.55 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO A POINT ON THE WEST LINE OF NORTH RUSH STREET;

THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST, A DISTANCE OF 104.51 FEET ALONG THE WEST LINE OF NORTH RUSH STREET TO THE POINT OF BEGINNING, ALL IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS.

PARCEL 2:

ALL THE LAND, PROPERTY AND SPACE LYING ABOVE A HORIZONTAL PLANE WHICH IS 22.00 FEET ABOVE THE CHICAGO CITY DATUM AND BELOW A HORIZONTAL PLANE WHICH IS 150 FEET ABOVE THE CHICAGO CITY DATUM, AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BEING THAT PART OF EAST NORTH WATER STREET, EAST KINZIE STREET AND NORTH WABASH AVENUE BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, SAID SOUTH LINE OF EAST NORTH WATER STREET BEING ALSO THE NORTH LINE OF A PARCEL OF LAND DENOTED AS

PARCEL 17 IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER AT NORTH WABASH AVENUE" PASSED BY THE CHICAGO CITY COUNCIL JULY 29, 1930, A DISTANCE OF 213.34 FEET TO THE POINT OF BEGINNING FOR THE PARCEL OF LAND HEREINAFTER DESCRIBED;

THENCE CONTINUING SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 58.74 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL 17, SAID POINT BEING ALSO THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE;

THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE, SAID SOUTHEASTERLY RIGHT OF WAY LINE BEING ALSO THE NORTHWESTERLY LINE OF AFORESAID PARCEL 17, A DISTANCE OF 22.62 FEET TO A POINT;

THENCE SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 18.45 FEET TO A POINT;

THENCE NORTHERLY, NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG THE ARC OF A CIRCLE WHICH HAS A RADIUS OF 50.00 FEET, A CHORD OF 94.53 FEET AND A CHORD BEARING OF NORTH 64 DEGREES 20 MINUTES 45 SECONDS EAST, AN ARC DISTANCE OF 123.85 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

NON-EXCLUSIVE EASEMENTS IN FAVOR OF PARCELS 1 AND 2, AS GRANTED IN THAT CERTAIN ORDINANCE BY THE CITY OF CHICAGO APPROVED SEPTEMBER 1, 2004 AS PUBLISHED IN JOURNAL PAGES 30411 TO 30458, BOTH INCLUSIVE, FOR THE IMPROVEMENT, USE AND MAINTENANCE OF PUBLIC WAYS, TO IMPROVE, MAINTAIN, REPAIR, REPLACE, USE AND OCCUPY FOR PEDESTRIAN PURPOSES, AND NOT VEHICULAR PURPOSES, THE FOLLOWING TRACTS OF LAND:

(A) NORTH WATER STREET PEDESTRIAN EASEMENT

ALL THE LAND, SPACE AND IMPROVEMENTS, AS DESCRIBED IN SAID ORDINANCE, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 22.00 FEET ABOVE THE CHICAGO CITY DATUM AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COMPRISING PARTS OF WATER LOTS 16 AND 17 AND A PORTION OF EAST NORTH WATER STREET, NORTH RUSH STREET, ORIGINAL EAST KINZIE STREET AND PART OF LOT 14 IN BLOCK 2 IN KINZIE'S ADDITION, WHICH TRACT OF LAND IS

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MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF PARCEL 17 AS ESTABLISHED IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER AT NORTH WABASH AVENUE" PASSED BY THE CHICAGO CITY COUNCIL JULY 29, 1930, A DISTANCE OF 213.34 FEET TO A POINT; THENCE NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE NORTH, HAVING A RADIUS OF 50.00 FEET, A CHORD DISTANCE OF 94.53 FEET AND A CHORD BEARING OF SOUTH 64 DEGREES 20 MINUTES 45 SECONDS WEST, AN ARC DISTANCE OF 123.85 FEET TO A POINT; THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 29.24 FEET TO A POINT; THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 24.79 FEET TO A POINT; THENCE NORTH 32 DEGREES 10 MINUTES 50 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 16.87 FEET TO A POINT; THENCE NORTHERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE EAST, HAVING A RADIUS OF 240.67 FEET, WITH A CHORD DISTANCE OF 70.72 FEET AND A CHORD BEARING OF NORTH 23 DEGREES 43 MINUTES 54 SECONDS EAST, AN ARC DISTANCE OF 70.98 FEET TO A POINT; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE PARALLEL WITH THE NORTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 94.61 FEET TO A POINT; THENCE NORTHEASTERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE SOUTHEAST, HAVING A RADIUS OF 52.64 FEET, WITH A CHORD DISTANCE OF 46.28 FEET AND A CHORD BEARING OF NORTH 51 DEGREES 59 MINUTES 36 SECONDS EAST, AN ARC DISTANCE OF 47.92 FEET TO A POINT; THENCE NORTH 25 DEGREES 34 MINUTES 12 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 5.53 FEET TO A POINT ON THE NORTH LINE OF EAST NORTH WATER STREET; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG THE NORTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 242.76 FEET TO A POINT; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 55.18 FEET TO A POINT ON THE SOUTH LINE OF SAID EAST NORTH WATER STREET; THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG SAID SOUTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 14.61 FEET TO A POINT; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 67.16 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 13.93 FEET TO A POINT ON THE EAST LINE OF NORTH RUSH STREET; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG SAID EAST LINE OF NORTH RUSH STREET, A DISTANCE OF 23.40 FEET TO A POINT; THENCE SOUTH 67 DEGREES 58 MINUTES 54 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 59.14 FEET TO A POINT; THENCE SOUTH 62 DEGREES 22 MINUTES 39

SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 12.78 FEET TO A POINT ON THE WEST LINE OF SAID NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST ALONG SAID WEST LINE OF NORTH RUSH STREET, A DISTANCE OF 108.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

(B) NORTH RUSH STREET PEDESTRIAN EASEMENT

ALL THE LAND, SPACE AND IMPROVEMENTS, AS DESCRIBED IN SAID ORDINANCE, LYING BELOW A HORIZONTAL PLANE WHICH IS 22.00 FEET ABOVE THE CHICAGO CITY DATUM, AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BEING THAT PART OF NORTH RUSH STREET BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET EXTENDED, A DISTANCE OF 52.84 FEET TO A POINT; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 67.16 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 13.93 FEET TO A POINT ON THE EAST LINE OF NORTH RUSH STREET; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG SAID EAST LINE OF NORTH RUSH STREET, A DISTANCE OF 23.40 FEET TO A POINT; THENCE SOUTH 67 DEGREES 58 MINUTES 54 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 59.14 FEET TO A POINT; THENCE SOUTH 62 DEGREES 22 MINUTES 39 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 12.78 FEET TO A POINT ON THE WEST LINE OF SAID NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST ALONG SAID WEST LINE OF NORTH RUSH STREET, A DISTANCE OF 108.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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WHEREAS, the Mezzanine Company is the sole owner of the membership interests of the Land Company, is an accommodation pledgor with respect to the Land Loan and will be the borrower under the Mezzanine Loan (as defined below) to the extent that the Option (as defined below) is exercised by Fortress;

WHEREAS, as a condition to making the Land Loan, Fortress required and the Company executed and delivered, that certain Option Agreement dated as of the date hereof (as the same may be amended, replaced, supplemented or otherwise modified from time to time, the "Option Agreement") for the benefit of Fortress; and

WHEREAS, Company and Fortress desire to record a Memorandum of Option as herein set forth.

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, covenant and agree as follows:

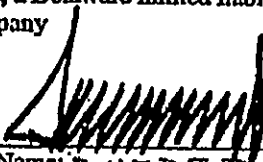
1. Option. The Company and Fortress have entered into the Option Agreement which granted to Fortress the right and option (the "Option") to provide new mezzanine financing (the "Mezzanine Loan") to be secured by, among other things, a pledge by the Mezzanine Company of all of the membership interests in the Land Company and certain rights with respect to the Property, exercisable by Fortress at such time and upon such terms and conditions as set forth in the Option Agreement.
2. Term. The Option may be exercised by Fortress from and after the date the Exercise Condition (as defined in the Option Agreement) shall have been satisfied though October 15, 2014 and otherwise in accordance with Section 5 of the Option Agreement.
3. Counterparts. This Memorandum may be executed in counterparts, and all such executed counterparts shall constitute the same agreement.
4. Recording Purpose Only. This Memorandum is made for recording purposes only to give notice to all third parties of the Option in favor of Fortress. This Memorandum shall not be construed to amend or in any way modify the terms of the Option Agreement, and in the event of any inconsistency between the terms of this Memorandum and the terms of the Option Agreement, the terms of the Option Agreement shall govern.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Option to be executed as of the day and year first above written.

LAND COMPANY

401 NORTH WABASH VENTURE
LLC, a Delaware limited liability
company

By: 
Name: DONALD J. TRUMP
Title: PRESIDENT

MEZZANINE COMPANY

401 MEZZ VENTURE LLC, a
Delaware limited liability company

By: _____
Name: _____
Title: _____

FORTRESS

FORTRESS CREDIT CORP., a
Delaware corporation

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Option to be executed as of the day and year first above written.

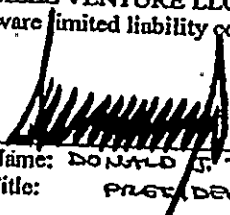
LAND COMPANY

401 NORTH WABASH VENTURE
LLC, a Delaware limited liability
company

By: _____
Name:
Title:

MEZZANINE COMPANY

401 MEZZ VENTURE LLC, a
Delaware limited liability company

By:  _____
Name: DONALD J. TRUMP
Title: PRESIDENT

FORTRESS

FORTRESS CREDIT CORP., a
Delaware corporation

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Option to be executed as of the day and year first above written.

LAND COMPANY

401 NORTH WABASH VENTURE
LLC, a Delaware limited liability
company

By: _____
Name:
Title:

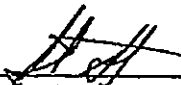
MEZZANINE COMPANY

401 MEZZ VENTURE LLC, a
Delaware limited liability company

By: _____
Name:
Title:

FORTRESS

FORTRESS CREDIT CORP., a
Delaware corporation

By:  _____
Name: STEVE STUART
Title: MANAGING DIRECTOR

STATE OF New York)
) ss.:
COUNTY OF New York)

I, Norma Foerderer, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Donald J. Trump of 401 NORTH WABASH VENTURE LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Foerderer appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary acts and as the free and voluntary act of said limited liability company. GIVEN under my hand and notarial seal this 13th day of October, 2004.

Norma Foerderer
Notary Public

My Commission Expires:

NORMA L. FOERDERER
NOTARY PUBLIC, State of New York
No. 01FO4743404
Qualified in New York County
Commission Expires Sept. 30, 2005

STATE OF _____)
) ss.:
COUNTY OF _____)

I, _____, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT _____ of 401 MEZZ VENTURE LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____ appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary acts and as the free and voluntary act of said limited liability company. GIVEN under my hand and notarial seal this _____ day of October, 2004.

Notary Public

My Commission Expires:

STATE OF _____)
) ss.:
COUNTY OF _____)

I, _____, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT _____ of 401 NORTH WABASH VENTURE LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____ appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary acts and as the free and voluntary act of said limited liability company. GIVEN under my hand and notarial seal this _____ day of October, 2004.

My Commission Expires:

Notary Public

STATE OF New York)
) ss.:
COUNTY OF New York)

I, Norma Foerderer, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Donald J. Kemp of 401 MEZZ VENTURE LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary acts and as the free and voluntary act of said limited liability company. GIVEN under my hand and notarial seal this 12 day of October, 2004.

My Commission Expires:

Notary Public

NORMA I. FOEDERER
NOTARY PUBLIC, State of New York
No. 01FO4743494
Qualified in New York County
Commission Expires Sept. 30, 2005

STATE OF New York)
) ss.:
COUNTY OF New York)

I, Susan Jeryl Robinson, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Steu Street of FORTRESS CREDIT CORP., a Delaware corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Director appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary acts and as the free and voluntary act of said corporation. GIVEN under my hand and notarial seal this 12th day of October, 2004.

Susan Jeryl Robinson
Notary Public

My Commission Expires:

SUSAN JERYL ROBINSON
NOTARY PUBLIC, State of New York
No. 01104823130
Qualified in New York County
Commission Expires April 4, 2008

EXHIBIT A

Description of Property

PARCEL 1:

A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH, 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF SAID PARCEL 17 A DISTANCE OF 272.18 FEET;

THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF PARCEL 17 A DISTANCE OF 22.62 FEET TO A POINT;

THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST, A DISTANCE OF 3.97 FEET TO A POINT;

THENCE CONTINUING SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST, A DISTANCE OF 43.72 FEET;

THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST, A DISTANCE OF 43.85 FEET;

THENCE SOUTH 52 DEGREES 21 MINUTES 58 SECONDS WEST; A DISTANCE OF 32.82 FEET;

THENCE SOUTH 49 DEGREES 32 MINUTES 01 SECOND WEST, A DISTANCE OF 32.53 FEET;

THENCE SOUTH 47 DEGREES 37 MINUTES 29 SECONDS WEST, A DISTANCE OF 51.47 FEET;

THENCE SOUTH 47 DEGREES 01 MINUTE 53 SECONDS WEST, A DISTANCE OF 2.033 FEET;

THENCE SOUTH 47 DEGREES 48 MINUTES 32 SECONDS WEST, A DISTANCE OF 42.61 FEET;

THENCE SOUTH 49 DEGREES 17 MINUTES 23 SECONDS WEST, A DISTANCE OF 44.057 FEET;

THENCE SOUTH 53 DEGREES 26 MINUTES 39 SECONDS WEST, A DISTANCE OF 24.308 FEET;

THENCE SOUTH 00 DEGREES 09 MINUTES 40 SECONDS WEST, A DISTANCE OF 116.60 FEET;

THENCE SOUTH 22 DEGREES 24 MINUTES 30 SECONDS EAST, A DISTANCE OF 34.47 FEET;

THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST, A DISTANCE OF 105.06 FEET;

THENCE SOUTH 39 DEGREES 30 MINUTES 25 SECONDS EAST, A DISTANCE OF 46.62 FEET TO A POINT ON THE NORTHERLY DOCK LINE OF THE CHICAGO RIVER;

THENCE NORTH 48 DEGREES 44 MINUTES 55 SECONDS EAST, A DISTANCE OF 401.26 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO AN ANGLE POINT IN SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER;

THENCE NORTH 62 DEGREES 25 MINUTES 37 SECONDS EAST, A DISTANCE OF 100.55 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO A POINT ON THE WEST LINE OF NORTH RUSH STREET;

THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST, A DISTANCE OF 104.51 FEET ALONG THE WEST LINE OF NORTH RUSH STREET TO THE POINT OF BEGINNING, ALL IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS.

PARCEL 2:

ALL THE LAND, PROPERTY AND SPACE LYING ABOVE A HORIZONTAL PLANE WHICH IS 22.00 FEET ABOVE THE CHICAGO CITY DATUM AND BELOW A HORIZONTAL PLANE WHICH IS 150 FEET ABOVE THE CHICAGO CITY DATUM, AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BEING THAT PART OF EAST NORTH WATER STREET, EAST KINZIE STREET AND NORTH WABASH AVENUE BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, SAID SOUTH LINE OF EAST NORTH WATER STREET BEING ALSO THE NORTH LINE OF A PARCEL OF LAND DENOTED AS PARCEL 17 IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER AT NORTH WABASH AVENUE" PASSED BY THE CHICAGO CITY COUNCIL JULY 29, 1930, A DISTANCE OF 213.34 FEET TO THE POINT OF BEGINNING FOR THE PARCEL OF LAND HEREINAFTER DESCRIBED;

THENCE CONTINUING SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 58.74 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL 17, SAID POINT BEING ALSO THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE;

THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE, SAID SOUTHEASTERLY RIGHT OF WAY LINE BEING ALSO THE NORTHWESTERLY LINE OF AFORESAID PARCEL 17, A DISTANCE OF 22.62 FEET TO A POINT;

THENCE SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 18.45 FEET TO A POINT;

THENCE NORTHERLY, NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG THE ARC OF A CIRCLE WHICH HAS A RADIUS OF 50.00 FEET, A CHORD OF 94.53 FEET AND A CHORD BEARING OF NORTH 64 DEGREES 20 MINUTES 45 SECONDS EAST, AN ARC DISTANCE OF 123.85 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

NON-EXCLUSIVE EASEMENTS IN FAVOR OF PARCELS 1 AND 2, AS GRANTED IN THAT CERTAIN ORDINANCE BY THE CITY OF CHICAGO APPROVED SEPTEMBER 1, 2004 AS PUBLISHED IN JOURNAL PAGES 30411 TO 30458, BOTH INCLUSIVE, FOR THE IMPROVEMENT, USE AND MAINTENANCE OF PUBLIC WAYS, TO IMPROVE, MAINTAIN, REPAIR, REPLACE, USE AND OCCUPY FOR PEDESTRIAN PURPOSES, AND NOT VEHICULAR PURPOSES, THE FOLLOWING TRACTS OF LAND:

(A) NORTH WATER STREET PEDESTRIAN EASEMENT

ALL THE LAND, SPACE AND IMPROVEMENTS, AS DESCRIBED IN SAID ORDINANCE, LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF 22.00 FEET ABOVE THE CHICAGO CITY DATUM AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF

LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COMPRISING PARTS OF WATER LOTS 16 AND 17 AND A PORTION OF EAST NORTH WATER STREET, NORTH RUSH STREET, ORIGINAL EAST KINZIE STREET AND PART OF LOT 14 IN BLOCK 2 IN KINZIE'S ADDITION, WHICH TRACT OF LAND IS MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF PARCEL 17 AS ESTABLISHED IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER AT NORTH WABASH AVENUE" PASSED BY THE CHICAGO CITY COUNCIL JULY 29, 1930, A DISTANCE OF 213.34 FEET TO A POINT; THENCE NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE NORTH, HAVING A RADIUS OF 50.00 FEET, A CHORD DISTANCE OF 94.53 FEET AND A CHORD BEARING OF SOUTH 64 DEGREES 20 MINUTES 45 SECONDS WEST, AN ARC DISTANCE OF 123.85 FEET TO A POINT; THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 29.24 FEET TO A POINT; THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 24.79 FEET TO A POINT; THENCE NORTH 32 DEGREES 10 MINUTES 50 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 16.87 FEET TO A POINT; THENCE NORTHERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE EAST, HAVING A RADIUS OF 240.67 FEET, WITH A CHORD DISTANCE OF 70.72 FEET AND A CHORD BEARING OF NORTH 23 DEGREES 43 MINUTES 54 SECONDS EAST, AN ARC DISTANCE OF 70.98 FEET TO A POINT; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE PARALLEL WITH THE NORTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 94.61 FEET TO A POINT; THENCE NORTHEASTERLY ALONG THE ARC OF A CIRCLE, CONVEX TO THE SOUTHEAST, HAVING A RADIUS OF 52.64 FEET, WITH A CHORD DISTANCE OF 46.28 FEET AND A CHORD BEARING OF NORTH 51 DEGREES 59 MINUTES 36 SECONDS EAST, AN ARC DISTANCE OF 47.92 FEET TO A POINT; THENCE NORTH 25 DEGREES 34 MINUTES 12 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 5.53 FEET TO A POINT ON THE NORTH LINE OF EAST NORTH WATER STREET; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG THE NORTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 242.76 FEET TO A POINT; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 55.18 FEET TO A POINT ON THE SOUTH LINE OF SAID EAST NORTH WATER STREET; THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG SAID SOUTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 14.61 FEET TO A POINT;

THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 67.16 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 13.93 FEET TO A POINT ON THE EAST LINE OF NORTH RUSH STREET; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG SAID EAST LINE OF NORTH RUSH STREET, A DISTANCE OF 23.40 FEET TO A POINT; THENCE SOUTH 67 DEGREES 58 MINUTES 54 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 59.14 FEET TO A POINT; THENCE SOUTH 62 DEGREES 22 MINUTES 39 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 12.78 FEET TO A POINT ON THE WEST LINE OF SAID NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST ALONG SAID WEST LINE OF NORTH RUSH STREET, A DISTANCE OF 108.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

(B) NORTH RUSH STREET PEDESTRIAN EASEMENT

ALL THE LAND, SPACE AND IMPROVEMENTS AS DESCRIBED IN SAID ORDINANCE, LYING BELOW A HORIZONTAL PLANE WHICH IS 22.00 FEET ABOVE THE CHICAGO CITY DATUM, AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BEING THAT PART OF NORTH RUSH STREET BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955; THENCE NORTH 78 DEGREES 25 MINUTES 00 SECONDS EAST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET EXTENDED, A DISTANCE OF 52.84 FEET TO A POINT; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 67.16 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 13.93 FEET TO A POINT ON THE EAST LINE OF NORTH RUSH STREET; THENCE SOUTH 00 DEGREES 18 MINUTES 37 SECONDS WEST ALONG SAID EAST LINE OF NORTH RUSH STREET, A DISTANCE OF 23.40 FEET TO A POINT; THENCE SOUTH 67 DEGREES 58 MINUTES 54 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 59.14 FEET TO A POINT; THENCE SOUTH 62 DEGREES 22 MINUTES 39 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 12.78 FEET TO A POINT ON THE WEST LINE OF SAID NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST ALONG SAID WEST LINE OF NORTH RUSH STREET, A DISTANCE OF 108.05 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

THIS INSTRUMENT WAS PREPARED BY AND
AFTER RECORDING SHOULD BE RETURNED
TO:

Steven G.M. Stein
John-Paul Lujan
Stein, Ray & Harris LLP
222 West Adams Street, Suite 1800
Chicago, Illinois 60606
(312) 641-3700



Doc#: 0429634139
Eugene "Gene" Moore Fee: \$18.50
Cook County Recorder of Deeds
Date: 10/22/2004 03:45 PM Pg: 1 of 4



ORIGINAL CONTRACTOR'S NOTICE AND CLAIM FOR MECHANICS LIEN

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The claimant, Environmental Systems Design, Inc. with an address at 175 West Jackson, Chicago, Illinois ("ESD"), hereby files its Original Contractor's Notice and Claim for Mechanics Lien and claims a mechanic's lien on the Real Estate (as hereinafter described) and against the interest(s) of LaSalle Bank, NA as Trustee under Trust Number 131086 Dated May 15, 2003 ("Owner"); The Trump Organization, Inc. with an address at 725 Fifth Avenue, New York, NY 10022; 401 N. Wabash Venture, LLC; Trump Chicago Managing Member LLC; Trump Chicago Member LLC; TIHT Chicago Member Acquisition LLC (The Trump Organization, Inc., 401 N. Wabash Venture, LLC, Trump Chicago Managing Member LLC, Trump Chicago Member LLC, and TIHT Chicago Member Acquisition LLC shall be collectively referred to herein as the "Trump Parties"); and against the interest(s) of any person or entity claiming or having an interest in the Real Estate (as hereinafter described) by, through or under Owner.

ESD states as follows:

1. Since May 15, 2003, and continuing thereafter, Owner owned fee simple title to the real estate (including all land and improvements thereon) (the "Real Estate") in Cook County, Illinois commonly known as 401 N. Wabash Avenue, Chicago, Illinois, and legally described as follows:

See Legal Description attached hereto as Exhibit A

The Real Estate Tax Identification Numbers are: 17-10-135-025-0000, and 17-10-136-008-0000.

2. On information and belief, since May 22, 2002, the Trump Parties (or one or more of them and/or any of their designees) had an option to purchase the Real Estate.

Address: 401 North Wabash, Chicago, Illinois
Pin Numbers: 17-10-135-025-000; 17-10-136-008-0000

3. On information and belief, the Trump Parties, as beneficiary of Owner, as agent of Owner or otherwise, had authority, or were knowingly permitted by Owner, to enter into contracts for the improvements to the Real Estate.

4. On or about September 23, 2002, one or more of the Trump Parties entered into a contract with ESD under which ESD agreed to perform certain mechanical, electrical, life-safety, fire protection, plumbing, telecommunication and other engineering services in connection with improvements to the Real Estate in exchange for payment on an hourly basis (the "Contract"). ESD performed the foregoing services pursuant to the Contract to the extent and value of One Million Seventy Two Thousand Eight Hundred and Fifty-Nine Dollars (\$1,072,859.00).

5. Owner authorized the Trump Parties to enter into contracts to improve the Real Estate. Alternatively, Owner knowingly permitted the Trump Parties to enter into contracts to improve the Real Estate.

6. The last day ESD performed services pursuant to and in accordance with the Contract was on August 20, 2004.

7. As of the date hereof, there is due, unpaid and owing to ESD for services performed under the Contract, after allowing all credits, the principal and lienable sum of Six Hundred Thirty One Thousand Four Hundred and Twenty-Eight Dollars (\$631,428.00) for which, with interest at the rate of 10% per annum, ESD claims a lien on the Real Estate.

Dated: October 21st, 2004

ENVIRONMENTAL SYSTEMS DESIGN, INC.

By: 

Name: George G. Vrecek
Its: Senior Vice President

Address: 401 North Wabash, Chicago, Illinois
Pin Numbers: 17-10-135-025-000; 17-10-136-008-0000

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

AFFIDAVIT

I, George G. Vrechek, being first duly sworn, depose and state that I am the Senior Vice President of Environmental Systems, Inc. ("ESD") and that I am duly authorized to execute this Original Contractor's Notice and Claim for Mechanics Lien on behalf of ESD, that I have read the foregoing Original Contractor's Notice and Claim for Mechanic's Lien and know the contents thereof, and that the statements contained therein are true.

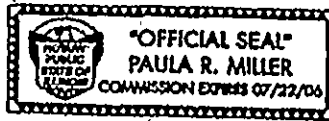
George G. Vrechek

Name: George G. Vrechek
Title: Senior Vice President

Subscribed and sworn to before me
this 21st day of October, 2004.

Paula R. Miller

Notary Public



**THIS INSTRUMENT WAS PREPARED BY AND
AFTER RECORDING SHOULD BE RETURNED TO:**

Steven G. M. Stein
John-Paul Lujan
Stein, Ray & Harris LLP
222 West Adams, Suite 1800
Chicago, Illinois 60606
(312) 641-3700

Address: 401 North Wabash, Chicago, Illinois
Pin Numbers: 17-10-135-025-000; 17-10-136-008-0000

EXHIBIT A**Legal Description:**

A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, LYING EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955; THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF SAID PARCEL 17 A DISTANCE OF 272.18 FEET; THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF PARCEL 17, A DISTANCE OF 22.62 FEET TO A POINT; THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST, A DISTANCE OF 3.97 FEET TO A POINT; THENCE CONTINUING SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST A DISTANCE OF 43.72 FEET; THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST, A DISTANCE OF 43.85 FEET; THENCE SOUTH 52 DEGREES 21 MINUTES 58 SECONDS WEST, A DISTANCE OF 32.82 FEET; THENCE SOUTH 49 DEGREES 32 MINUTES 01 SECOND WEST, A DISTANCE OF 32.53 FEET; THENCE SOUTH 47 DEGREES 37 MINUTES 29 SECONDS WEST, A DISTANCE OF 51.47 FEET; THENCE SOUTH 47 DEGREES 01 MINUTES 53 SECONDS WEST, A DISTANCE OF 2.03 FEET; THENCE SOUTH 47 DEGREES 48 MINUTES 32 SECONDS WEST, A DISTANCE OF 42.61 FEET; THENCE SOUTH 49 DEGREES 17 MINUTES 23 SECONDS WEST, A DISTANCE OF 44.057 FEET; THENCE SOUTH 53 DEGREES 26 MINUTES 39 SECONDS WEST, A DISTANCE OF 24.308 FEET; THENCE SOUTH 00 DEGREES 09 MINUTES 40 SECONDS WEST, A DISTANCE OF 116.60 FEET; THENCE SOUTH 22 DEGREES 24 MINUTES 30 SECONDS EAST, A DISTANCE OF 34.47 FEET; THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST, A DISTANCE OF 105.06 FEET; THENCE SOUTH 39 DEGREES 30 MINUTES 25 SECONDS EAST, A DISTANCE OF 46.62 FEET TO A POINT ON THE NORTHERLY DOCKLINE OF THE CHICAGO RIVER; THENCE NORTH 48 DEGREES 44 MINUTES 55 SECONDS EAST, A DISTANCE OF 401.26 FEET ALONG SAID NORTHERLY DOCKLINE OF THE CHICAGO RIVER TO AN ANGLE POINT IN SAID NORTHERLY DOCKLINE OF THE CHICAGO RIVER; THENCE NORTH 62 DEGREES 25 MINUTES 37 SECONDS EAST, A DISTANCE OF 100.55 FEET ALONG SAID NORTHERLY DOCKLINE OF THE CHICAGO RIVER TO A POINT ON THE WEST LINE OF NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST, A DISTANCE OF 104.51 FEET ALONG THE WEST LINE OF NORTH RUSH STREET TO THE POINT OF BEGINNING, ALL IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS.

Address: 401 North Wabash, Chicago, Illinois
 Pin Numbers: 17-10-135-025-000; 17-10-136-008-0000

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
MECHANICS LIEN SECTION

ENVIRONMENTAL SYSTEMS DESIGN, INC., an Illinois
corporation,

Plaintiff,

v.

THE TRUMP ORGANIZATION, INC.; 401 N. WABASH
VENTURE, LLC; FORTRESS CREDIT CORP.;
UNKNOWN OWNERS and NON-RECORD CLAIMANTS,

Defendants.

Case No. 04 CH 19151



Doc#: 0432444087
Eugene "Gene" Moore Fee: \$18.50
Cook County Recorder of Deeds
Date: 11/19/2004 02:02 PM Pg: 1 of 2

LIS PENDENS NOTICE

John-Paul Lujan, one of the attorneys for Plaintiff, Environmental Systems Design, Inc. ("ESD"), hereby certifies that ESD's Complaint to Foreclose Mechanics Lien and for Other Relief (the "Complaint") was filed in the above Court on November 18, 2004 and is now pending in said Court and that the property affected by said Complaint is legally described as follows:

A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, LYING EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955; THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF SAID PARCEL 17 A DISTANCE OF 272.18 FEET; THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF PARCEL 17, A DISTANCE OF 22.62 FEET TO A POINT; THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST, A DISTANCE OF 3.97 FEET TO A POINT; THENCE CONTINUING SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST A DISTANCE OF 43.72 FEET; THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST, A DISTANCE OF 43.85 FEET; THENCE SOUTH 52 DEGREES 21 MINUTES 58 SECONDS WEST, A DISTANCE OF 32.82 FEET; THENCE SOUTH 49 DEGREES 32 MINUTES 01 SECOND WEST, A DISTANCE OF 32.53 FEET; THENCE SOUTH 47 DEGREES 37 MINUTES 29 SECONDS WEST, A DISTANCE OF 51.47 FEET; THENCE SOUTH 47 DEGREES 01 MINUTES 53 SECONDS WEST, A DISTANCE OF 2.03 FEET; THENCE SOUTH 47 DEGREES 48 MINUTES 32 SECONDS WEST, A DISTANCE OF 42.61 FEET; THENCE SOUTH 49 DEGREES 17

Address: 401 N. Wabash, Chicago, Illinois
Pin Number: 17-10-135-025-0000, and 17-10-138-008-0000

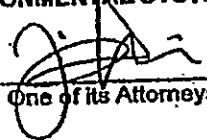
MINUTES 23 SECONDS WEST, A DISTANCE OF 44.057 FEET, THENCE SOUTH 53 DEGREES 28 MINUTES 39 SECONDS WEST, A DISTANCE OF 24.308 FEET; THENCE SOUTH 00 DEGREES 09 MINUTES 40 SECONDS WEST, A DISTANCE OF 116.60 FEET; THENCE SOUTH 22 DEGREES 24 MINUTES 30 SECONDS EAST, A DISTANCE OF 34.47 FEET; THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST, A DISTANCE OF 105.06 FEET; THENCE SOUTH 39 DEGREES 30 MINUTES 25 SECONDS EAST, A DISTANCE OF 46.62 FEET TO A POINT ON THE NORTHERLY DOCKLINE OF THE CHICAGO RIVER; THENCE NORTH 48 DEGREES 44 MINUTES 55 SECONDS EAST, A DISTANCE OF 401.26 FEET ALONG SAID NORTHERLY DOCKLINE OF THE CHICAGO RIVER TO AN ANGLE POINT IN SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER; THENCE NORTH 62 DEGREES 25 MINUTES 37 SECONDS EAST, A DISTANCE OF 100.55 FEET ALONG SAID NORTHERLY DOCKLINE OF THE CHICAGO RIVER TO A POINT ON THE WEST LINE OF NORTH RUSH STREET; THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST, A DISTANCE OF 104.51 FEET ALONG THE WEST LINE OF NORTH RUSH STREET TO THE POINT OF BEGINNING, ALL IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS.

The Real Estate Tax Identification Numbers are: 17-10-135-025-0000, and 17-10-136-008-0000;


and commonly known as 401 North Wabash, Chicago, Illinois.

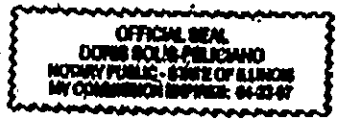
Dated: November 18, 2004

ENVIRONMENTAL SYSTEMS DESIGN, INC.

By: 
One of its Attorneys

Subscribed and sworn to before me
this 18 day of November, 2004,


Notary Public



AFTER RECORDING THIS INSTRUMENT
SHOULD BE RETURNED TO:

Steven G.M. Stein
John-Paul Lujan
Stein, Ray & Harris
222 West Adams - Suite 1800
Chicago, Illinois 60606
(312) 641-3700



Address: 401 N. Wabash, Chicago, Illinois
Pin Number: 17-10-135-025-0000, and 17-10-136-008-0000



Doc#: 0603122208
Eugene "Gene" Moore Fee: \$138.60
Cook County Recorder of Deeds
Date: 01/31/2005 01:41 PM Pg: 1 of 57

This space reserved for Recorder's use only.

ACCESS AND CONSTRUCTION AGREEMENT

THIS ACCESS AND CONSTRUCTION AGREEMENT (the "Agreement") is entered into as of this 17th day of December, 2004 (the "Effective Date") by and among 330 N. WABASH AVENUE, L.L.C., a Delaware limited liability company ("330"), BOVIS LEND LEASE, INC., a Florida corporation ("Bovis"), and 401 NORTH WABASH VENTURE, LLC, a Delaware limited liability company ("401").

WITNESSETH:

WHEREAS, 401 owns the property legally described in Exhibit A attached hereto and incorporated herein, currently improved with the former Chicago Sun-Times Newspaper headquarters and printing plant, commonly known as 401 North Wabash Avenue, Chicago, Illinois (collectively the "401 Property"); and

WHEREAS, 401 has proposed to redevelop the 401 Property by constructing a new high-rise building (the "Trump International Hotel & Tower") to contain a mix of various residential and commercial uses, parking and loading facilities, associated uses and exterior landscaped and hardscape improvements on both the 401 Property and certain adjacent areas (exclusive of the 330 Property, as hereinafter defined); and

**This Document Prepared by
and After Recording Return to:**

Jeffrey N. Owen, Esq.
Piper Rudnick LLP
203 North LaSalle Street, Suite 1900
Chicago, Illinois 60601
CII-145293478

**Permanent Real Estate
Tax Identification Number**

17-10-135-025
17-10-136-008
401 N. Wabash
Chgo IL

WHEREAS, 330 owns or ground leases the property legally described in Exhibit B attached hereto and incorporated herein, which is improved with a fifty-two (52) story office tower, with a plaza overlooking the Chicago River and other related amenities and improvements, located at 330 North Wabash Avenue, Chicago, Illinois and commonly known as One IBM Plaza (the "IBM Building"). 330 also owns the public parking garage located at 400 North Wabash Avenue, Chicago, Illinois (the "Parking Garage"), which provides parking for tenants and occupants of the IBM Building and the public generally (the Parking Garage and the IBM Building are collectively defined in this Agreement as the "330 Property"); and

WHEREAS, pursuant to a certain Ordinance enacted by the City Council of the City of Chicago on July 29, 1930, and as implemented by an Indenture dated October 17, 1930, between the City of Chicago (the "City") and the Chicago and North Western Railway Company and recorded on October 22, 1930 with the Recorder of Deeds of Cook County, as Document Number 10774442 (the "City Wabash Avenue Easement Agreement"), the City was granted the right and obligation to construct a bridge across the Chicago River, to be joined with a new upper and lower Wabash Avenue. That agreement also obligates the City to repair, maintain and replace the bridge and upper and lower Wabash Avenue, as and when required, in the judgment of the City; and

WHEREAS, pursuant to a certain Ordinance enacted by the City Council of the City on September 1, 2004, and published in the Journal of Proceedings of the City Council of the City of Chicago for such date, on pages 30411 through 30453, inclusive (the "City Ordinance"), the City and 401 have agreed to enter into a certain Construction and Easement Agreement (the "City/401 Construction and Easement Agreement"), which will require 401, acting on behalf of the City, to cause Bovis and other contractors and subcontractors to demolish, repair, replace and install certain improvements to upper and lower Wabash Avenue, located in material part in the public way, such improvements defined in the City/401 Construction and Easement Agreement as the "Improvements", such definition incorporated into this Agreement and redefined as the "Wabash Avenue Improvements"; and

WHEREAS, the Wabash Avenue Improvements include not only public improvements, but also certain private improvements which benefit only the owner of the 401 Property, including, but not limited to, parking facilities, loading docks and other below-grade structures; and

WHEREAS, the ownership interest and rights of 330, and all tenants and occupants of the 330 Property, and anyone claiming by, through and under 330 and those tenants and occupants, are subject to the rights of the City under the City Wabash Avenue Easement Agreement; and

WHEREAS, during the course of construction of the Wabash Avenue Improvements, some portions of the 330 Property will be impacted, and Bovis, 401 and 330 have agreed to a program and the following terms and conditions, as more fully described in this Agreement, to mitigate such impact on the 330 Property; and

WHEREAS, 330 has agreed to allow access onto the 330 Property, and the right to perform work to, abutting and on the 330 Property, for the purposes specified in the City/401 Construction and Easement Agreement, and Bovis and 401 have agreed to perform such work, as provided in this Agreement (such improvements, activities, work and program with respect to the 330 Property, approved by the parties as provided in this Agreement, are defined collectively as the "330 Property Work").

NOW, THEREFORE, in consideration of these Recitals, which by this reference are incorporated herein, the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 330, Bovis and 401 agree as follows:

Section 1. 330 Property Work and 330 Work Plans.

(a) **Design and Program Approval Submittals.** The 330 Property Work shall be performed in accordance with plans and specifications for the 330 Property Work (which plans and specifications shall be prepared and stamped by professional architects and engineers licensed in the State of Illinois) and procedures, all of which shall be approved by the City, 330, Bovis and 401, in accordance with Section 1(b) of this Agreement, based in material part on the preliminary plans, specifications and construction activities and programs delineated in Exhibit C attached hereto and made a part hereof (the final plans and specifications and construction activities for the 330 Property Work, as finally approved by 330 in accordance with this Agreement, are defined as the "Final 330 Work Plans"). In connection with the Final 330 Work Plans, 330, 401 and Bovis agree to the following:

(i) With respect to the lower level wall along the West property line of Trump International Hotel & Tower, adjacent to the 330 Property, Bovis shall prepare and submit drawings with plan views, sections and elevations describing the existing condition of the impacted portions of this wall, and, later, when such drawings have been prepared, the replacement or permanent repair of such impacted portions (all of which shall subject to the approval of 330 as provided below, not to be unreasonably withheld, qualified or delayed). These drawings shall provide sufficient detail pertaining to engineering disciplines as appropriate to include the north end generator section, the middle EPA Tank section, and the Exelon plant section (collectively, the "Exelon Facility").

(ii) With respect to construction barricades along the expansion joint running along the IBM Building, Bovis shall provide so-called "Jersey barriers" with an 8' high cyclone fence anchored on top of the barriers. The Jersey barriers shall be supported independently of the IBM Building structure and the plaza surface shall be adequately protected. The barriers and barricades shall be situated so window washing operations on the IBM Building may continue unimpeded. During relevant periods during the demolition process, Bovis shall cause the barriers to be appropriately covered to shield pedestrians from construction debris. Bovis shall install signage for wayfinding and other painted

signage identifying garage and retail tenants (collectively, the "Signage") on such barriers and barricades. Wayfinding signage shall be professionally designed and fabricated by Bovis, and signage for the garage and retail tenants shall be designed and fabricated by those tenants (or 330), and all such signs shall be installed by Bovis, in compliance with City standards and subject to the reasonable approval of 401, Bovis and 330, not to be unreasonably withheld, qualified or delayed. Bovis (and/or 401) shall pay the cost of fabricating the wayfinding signage and the cost of installing the wayfinding signage and the garage and retail tenant signage; 330 (or the particular tenant) shall pay for the cost of fabricating the signage for the garage and the retail tenants.

(iii) With respect to removal of pavers from the IBM Building plaza, Bovis shall only remove the pavers required to perform the Wabash Avenue Improvements. Any pavers removed or damaged by Bovis and/or its subcontractors shall be replaced by Bovis at Bovis's and 401's sole cost and expense. Hard Surface Finishers, Inc. ("Hard Surface") has submitted a bid for removal and replacement of certain pavers from the IBM Building, and Hard Surface is hereby approved by 330 as the subcontractor of Bovis to perform such removal and replacement, but 330 does not approve or disapprove the amount or any of the other terms of such bid. Bovis shall require Hard Surface (or such other paver replacement company as may be approved by 330 to perform such removal and replacement) to obtain and/or control an adequate stock of new materials to assure the replacement of the pavers and to warrant any replacement pavers from defects in materials or workmanship for a period of one year from installation and return to service of the plaza adjoining the IBM Building. Prior to removing any pavers as provided in this subsection, Bovis shall provide 330 with an as-built layout of the granite pavers along the east line of the IBM Building with the location of the construction barricades. Bovis shall provide 330 with a copy of the contract with Hard Surface and with any other paver replacement company approved by 330 promptly after any such contract is executed.

(iv) With respect to the expansion joint currently in place, 401 and Bovis shall leave the metal expansion joint on the IBM Building side in place, unaltered (provided that such joint is smooth, clean and undamaged), and replace the rubber gasket joint once the expansion joint on the City side of Wabash Avenue is completed.

(b) Approvals. 401, Bovis, the City and 330 have approved the preliminary plans, specifications and construction activities and programs for the 330 Property Work attached as Exhibit C. Portions of the 330 Property Work shall be designed and commenced before others; 401 and Bovis shall submit in a timely manner refinements, revisions and changes to plans and drawings to 330 and 330 shall approve such submissions in writing (such approval not to be unreasonably withheld, qualified or delayed) and/or provide comments to such submissions in a timely manner but in any event within fourteen (14) days after receipt of such submissions so as to allow the Wabash Avenue Improvements and the 330 Property Work to commence and continue in

accordance with the 330 Property Phasing and Schedule Plan (as defined in Section 1(c) below). The parties shall work together in good faith to resolve any questions or issues relating to such submissions. In the event of a dispute over any portion of the Final 330 Work Plans or any other items submitted to or requests made of 330 for approval which is objected to by 330, 401, Bovis and 330 shall request the Commissioner of Transportation of the City ("Commissioner") to decide the matter in controversy, and the decision of the Commissioner shall be binding upon 401, Bovis, 330 and the City. No portion of the 330 Property Work may be commenced by 401 or Bovis until the plans, specifications or other materials relating to such portion of the 330 Property Work have been approved in writing by 330 or the Commissioner, as provided for in the immediately preceding sentence. The 330 Property Work shall be performed in accordance with the Final 330 Work Plans (or such portion of those plans which have been approved) and Law (as hereinafter defined). As used herein, the term "Law" shall mean all Federal, State and local laws and regulations, including, but not limited to, those regarding accessibility standards for persons with disabilities or environmentally limited persons, including, but not limited to (1) the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. 12101, et seq., and the regulations promulgated thereunder, (2) the Illinois Environmental Barriers Act (410 ILCS 25/1 et seq. (1996)), (3) The Illinois Accessibility Code, 71 Ill. Adm. Code 400, and (4) codes and building ordinances of the City of Chicago, State of Illinois.

(c) Phasing and Schedule Plan. The Final 330 Work Plans shall also include a plan for the phasing of the 330 Property Work and a specific schedule for its duration and completion (the "330 Property Phasing and Schedule Plan"), a copy of which is attached hereto as Exhibit D and made a part hereof. Subject to delays occasioned by events of force majeure, 401 and Bovis shall use all diligent, good-faith efforts to substantially complete the 330 Property Work by the dates specified in the 330 Property Phasing and Schedule Plan. The parties acknowledge and agree that the 330 Property Work and the 330 Property Phasing and Schedule Plan are part of the broader work and schedule established by the City and accepted by 401 and Bovis for performance and completion of the Wabash Avenue Improvements (the "Wabash Avenue Improvements Schedule"). 330, 401 and Bovis acknowledge and agree that the Wabash Avenue Improvements Schedule and the phasing and sequencing of work described therein shall ultimately govern and control the work described in this Agreement; provided, however, neither 401 nor Bovis shall reverse or otherwise alter the anticipated sequence or phasing of any of the Wabash Avenue Improvements so as to materially lengthen the anticipated time or sequence currently planned for initially opening the northerly portion of Wabash Avenue traffic to drop-off areas near the 330 Property canopy and entrance, unless required by the City after consultation with 330, 401 and Bovis. Unless the City shall hereafter require a different construction sequence for the Wabash Avenue Improvements, 401 and Bovis shall follow the construction sequence described on Sheet SR-010, "N. Wabash Roadway/Parking Structural Notes, Sections, Symbols & Drawing List", last revised September 3, 2004, prepared by Skidmore, Owings & Merrill.

Further, the City, 401 and Bovis shall make good faith efforts to assure the timely action and coordination of City-related entities such as the Bureau of Electricity for streetlights, utility cutoff and restart, water and sewer, etc and private utilities in order to minimize road downtime.

(d) Damage Survey. 401, at its expense, has engaged STS Consultants, Ltd. ("STS") to take a photographic damage survey of existing conditions with elevation benchmarks for all key elements and building features relating to the adjacent exterior portions of the 330 Property. A seismometer shall be installed to measure vibration and impact on surrounding property during construction of the Wabash Avenue Improvements, including, but not limited to, the installation of caissons and sheet piling, to confirm that such vibrations and impact are within limits required by Law, and a protocol for making such information readily available to 330 shall be established by Bovis, 401 and 330. In addition, 330, 401 and Bovis shall designate in writing representatives (the "330 Representative", the "401 Representative" and the "Bovis Representative", respectively) who can be reached at any time in the event of an emergency and who will be authorized to act on behalf of 330, Bovis and 401 to respond to the matter in question. A copy of the existing conditions damage surveys prepared by STS shall be delivered to 330 concurrent with the execution of this Agreement.

Section 2. Construction.

(a) General Requirements. 401 and Bovis shall cause the Wabash Avenue Improvements to be constructed and work performed in accordance with the City/401 Construction and Easement Agreement. 401 and Bovis, once the work on the Wabash Avenue Improvements is commenced, shall diligently and continuously pursue such work to completion. 401 has posted a bond with the City, as required by the City/401 Construction and Easement Agreement and approved by the Commissioner, securing the completion of the Wabash Avenue Improvements. 401 shall provide 330 with a copy of the bond. 401 shall cause Bovis to perform the 330 Property Work, and Bovis shall cause the 330 Property Work to be performed, in accordance with the Final 330 Work Plans, the 330 Property Phasing and Schedule Plan, the Law and this Agreement. Upon completion of the Wabash Avenue Improvements, the City Resident Engineer, as required by the City/401 Construction Easement Agreement and established City guidelines, shall issue a letter to the City, 330 and 401 in form and substance required by the City, certifying that the Wabash Avenue Improvements (which include the 330 Property Work) have been substantially completed in conformance with the Law and the final plans and specifications for the Wabash Avenue Improvements. Acceptance of the Wabash Avenue Improvements by the Commissioner and turnover of the Wabash Avenue Improvements to the City shall establish, for the purposes of this Agreement and the rights and obligations of 330, 401 and Bovis hereunder, that the Wabash Avenue Improvements have been finally completed, subject to completion of any punchlist items or remaining items specified by the Commissioner.

(b) Specific Requirements. As will be more fully detailed in the Final 330 Work Plans and the 330 Property Phasing and Schedule Plan, 401 hereby agrees to cause Bovis to do, and Bovis hereby agrees to do, among other things, the following:

- (i) To control construction traffic at the east and west ends of Carroll Street, Bovis shall submit written street restrictions to the City for review and approval and to 330 for informational purposes and for timely good faith consultation with 330. Bovis shall also maintain a gated entry at both ends of Carroll Street, to be open during construction hours, and post no trespassing signs. Any changes to these restrictions required or approved by the City shall promptly be provided to 330 for timely good faith consultation.
- (ii) Bovis shall comply with current City regulations and requirements regarding dust and noise control. The Bovis Representative shall be available for consultation with the 330 Representative at least once during each calendar month concerning dust and noise suppression activities.
- (iii) Bovis shall construct a temporary access bridge (the "Pedestrian Bridge") in the location approved by the City and shown on Exhibit E. The Pedestrian Bridge shall be supported independently from the 330 plaza deck. Bovis shall remove the railing on the 330 Property plaza deck to install the Pedestrian Bridge but shall replace such railing and repair any damage to the 330 Property plaza deck caused by such removal and the construction of the Pedestrian Bridge. The width, height, strength, lighting and other characteristics of the Pedestrian Bridge are delineated on Exhibit E attached hereto based on plans prepared by the in-house licensed engineer for the scaffolding company. Bovis shall install signage for wayfinding on the Pedestrian Bridge in accordance with the requirements for wayfinding signage as provided in Section 1(a)(ii) above.
- (iv) 401, Bovis and the City have agreed upon and Bovis shall install a temporary cab turnaround at the north end of the Wabash Avenue Bridge over the Chicago River with construction of a curb ramp for ADA compliance, until traffic over completed portions of Wabash Avenue and the Wabash Avenue bridge have been restored and jersey barriers removed from the IBM Building plaza. 401 and Bovis shall provide 330 with a copy of the drawings, plans and specifications detailing the temporary cab turnaround and curb ramp concurrent with the execution of this Agreement. Similarly, 401, Bovis and the City shall agree upon, and the City shall establish, a circulation path and a cabstand on southbound Wabash Avenue immediately to the north of the north end of the construction zone on Wabash Avenue. Bovis shall submit a copy of such circulation path to 330 for informational purposes and for timely good faith consultation with 330.
- (v) Certain construction activities will require the temporary closure of access from Kinzie Street to the lower level parking garage in the IBM Building, such construction activities to include, but not be limited to, demolition of the existing Wabash Avenue street improvements, erection of steel for new Wabash Avenue and pouring concrete for new Wabash Avenue and related improvements. The current schedule for these construction activities calls for demolition of existing Wabash Avenue to begin in January 2005, with steel erection scheduled

to begin in May 2005, and pouring concrete in July 2005. The parties anticipate that closure of access to the lower level parking garage in the IBM Building should not exceed the following periods: (i) 5 days during demolition, (ii) 5 days during steel erection, and (iii) 5 days during the concrete pour. Bovis shall provide 330 with at least one (1) week's prior written notice before beginning an activity that would result in the temporary closure of the lower level garage in the IBM Building so that 330 may notify the impacted tenants and make alternative parking arrangements for those tenants as needed. If the time of closure exceeds the specified 5 day period, as 330's sole and exclusive remedy for such extended closure, Bovis shall pay to 330, in addition to the sums payable to 330 pursuant to Section 6(a) below, the sum of \$300 per day for each day the lower level garage is closed beyond the applicable 5 day period, until the construction activity forcing the closure of the lower level garage is completed, the lower level garage is restored to substantially the same condition as it was in immediately prior to such construction activities, and access to the lower level garage is fully restored.

(vi) 330 may notify the Bovis Representative in the event of any damage, graffiti, failure to perform regular snow removal, broken or burned out lighting or other maintenance issues with respect to the Signage and the Pedestrian Bridge. In the event there is damage, graffiti, failure to perform regular snow removal on the Pedestrian Bridge, broken or burned out lighting on the Pedestrian Bridge or other maintenance issues which are not corrected or rectified by Bovis promptly after notice from 330 (but no more than 5 days after such notice), 330 shall have the right, but not the obligation, to remove the graffiti or perform the snow removal or replace the burned out lighting, and Bovis shall reimburse 330 for the reasonable cost thereof upon written demand.

Section 3. Construction Phase Indemnities. Except for the negligence of 330, its agents, employees or contractors, Bovis, hereby agrees to indemnify, defend and hold harmless 330, its officers, directors, shareholders, employees, agents, tenants and mortgagees and their respective successors in interest (collectively, the "330 Indemnitees") from and against any and all claims, demands, damages, lawsuits, legal proceedings, losses, liens, liabilities, judgments, orders or decrees, including all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, court costs and other reasonable expenses related to litigation incurred by the 330 Indemnitees in connection therewith) (collectively, "Losses") arising from or as a result of the performance of the Wabash Avenue Improvements and the 330 Property Work, provided that such Loss is attributable to (i) the death of, or personal injury caused to, any natural person; or (ii) physical damage to or loss of real or personal property of any person or entity. The indemnity obligations of Bovis shall survive the termination of this Agreement.

Section 4. Construction Insurance.

(a) **Coverage Required.** Prior to commencement of construction and performance of the Wabash Avenue Improvements and the 330 Property Work, 401 and/or Bovis shall procure and maintain, at the sole cost and expense of 401 and Bovis, or shall cause to be procured and maintained at all times prior to final completion of the

Wabash Avenue Improvements and the 330 Property Work, the types and coverages of insurance specified on Exhibit F attached hereto and made a part hereof.

(b) Evidence. 401 and/or Bovis shall furnish 330 with original Certificates of Insurance, or such similar evidence, to be in force on the earlier to occur of (i) the date of commencement of the Wabash Avenue Improvements, (ii) the date of commencement of the 330 Property Work, or (iii) the date of first entry upon the 330 Property, and renewal Certificates of Insurance; or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Bovis and/or 401 must submit evidence of insurance on Accord Form 27 or equivalent. The insurance must provide for thirty (30) days prior written notice to be given to 330 in the event coverage is substantially changed, canceled, or not renewed.

Section 5. Completion of Construction. Each of 401 and Bovis shall act diligently and shall require its respective contractors, subcontractors and consultants to act diligently toward substantially and finally completing construction of (i) the Wabash Avenue Improvements in accordance with this Agreement, 401 and Bovis shall (a) cause the 330 Property Work in accordance with this Agreement, and (ii) the 330 Property Work to be finally completed in accordance with Section 2(a) of this Agreement, and (b) submit to 330 as built drawings showing the completed 330 Property Work and its integration with the completed Wabash Avenue Improvements.

It is understood and agreed that TIME IS OF THE ESSENCE IN THE PROSECUTION OF THE WORK DESCRIBED IN THIS AGREEMENT, because until completed, a substantial and material street and bridge providing pedestrian and vehicular access to the 330 Property will be disrupted. Recognizing this requirement, 401 and Bovis (a) agree to cause the Wabash Avenue Improvements and the 330 Property Work to be prosecuted diligently so as to complete the Wabash Avenue Improvements and the 330 Property Phasing and Schedule. Plan, Construction and Easement Agreement and the 330 Property Phasing and Schedule. Plan, respectively, and (b) shall comply with directives and remedial measures specified by the City pursuant to the City/401 Construction and Easement Agreement if construction of the 330 Property Work or the Wabash Avenue Improvements falls behind schedule.

Section 6. Reimbursement of Costs. In addition to any other costs or other amounts required to be paid by 401 or Bovis to 330 hereunder, 401 and Bovis shall pay to 330 the following amounts:

(a) An amount equal to the cost of providing substitute parking to Jenner & Block ("Jenner") for the 13 parking spaces in the lower level garage of the IBM Building leased by Jenner from 330, during any period in which the access to the lower level garage is restricted due to the construction of the Wabash Avenue Improvements or the 330 Property Work;

(b) An amount equal to any actual costs incurred by, or actual claims asserted against, 330 as a result of the impact, if any, of the Wabash Avenue Improvements and/or the 330 Property Work on the Exelon Facility, to the extent such costs or claims are not

paid to 330 from insurance proceeds under insurance policies obtained by 401 or Bovis;
and

(c) An amount equal to \$75,000.00 to reimburse 330 for costs and expenses incurred by 330 in connection with this Agreement.

The amount specified in Section 6(c) above shall be paid to 330 within thirty (30) days of the date of this Agreement. The amounts specified in Sections 6(a) and 6(b) above shall be paid to 330 within thirty (30) days after written demand from 330 for such amounts, with each such demand being accompanied by reasonable supporting documentation.

Section 7. Notice and Opportunity to Cure. 330, on the one hand, and 401 and Bovis, on the other, may, upon breach of any of the terms and provisions of this Agreement, send written notice of such breach to the party causing such breach. Unless another period is stated, and except in case of emergency, in the event any breach is not cured within sixty (60) days after receipt of such notice of breach, then the party causing such breach shall be deemed in default of its obligations under this Agreement, and the non-defaulting party shall have such rights and remedies as shall be available to it at law or in equity; provided that in the event a default cannot reasonably be cured within sixty (60) days after written notice has been received by the defaulting party and the defaulting party is proceeding diligently to cure the default at the expiration of the sixty (60) day period, the defaulting party shall have such additional time as may be reasonably necessary to cure said default. In the case of an emergency, the cure shall be undertaken as soon as reasonably possible to minimize further injury of persons and loss or damage to property.

Section 8. Partial Invalidity. If any clause, sentence or other portion of this Agreement shall become illegal, null and void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion hereof shall remain in full force and effect. The termination of any one or more provisions of this Agreement shall not affect the continuing validity of the other provisions of this Agreement.

Section 9. Notices. Any and all notices, demands or other communications required or permitted pursuant to this Agreement shall be in writing and shall have been given when received, and may be personally delivered or deposited with the United States Postal Service, certified or registered mail, postage prepaid and return receipt requested, and addressed to Bovis, 401, 330 and the City at their respective addresses set forth below, or to such substitute or additional addresses or addressees as Bovis, 401, 330, the City or other persons entitled to notice hereunder may designate by notice in accordance herewith (it being expressly acknowledged that the parties entitled to notice hereunder may designate any bona-fide third party who, at such time, is the holder of a recorded mortgage encumbering all or a portion of the 401 Property or the 330 Property as a "Mortgagee" entitled to notice hereunder):

If to 401:

c/o The Trump Organization
725 Fifth Avenue
New York, New York 10022
Attn: Allen Weisselberg

With a copy to: The Trump Organization
725 Fifth Avenue
New York, New York 10022
Attn: Russell Flicker

And with a copy to: Piper Rudnick LLP
203 North LaSalle Street, Suite 1900
Chicago, Illinois 60601
Attn: Theodore J. Novak and
Jeffrey N. Owen

If to Bovis: c/o Bovis Lend Lease, Inc.
200 Park Avenue
New York, New York 10166
Attn: Mr. Michael Silvermintz

With a copy to: c/o Bovis Lend Lease, Inc.
One North Wacker Drive, Suite 850
Chicago, Illinois 60606
Attn: Mr. Paul James

If to City, at: Commissioner of Transportation
30 North LaSalle Street
Room 1100
Chicago, Illinois 60602

(Or to such other address that the Commissioner shall have published generally throughout the City)

With a copy to: City of Chicago - Corporation Counsel
121 North LaSalle Street
Room 600 City Hall
Chicago, Illinois 60602

If to 330: 330 N. Wabash Avenue, L.L.C.
c/o Prime Group Realty Trust
77 West Wacker Drive, Suite 3900
Chicago, Illinois 60601
Attn: Jeffrey A. Patterson

With a copy to: Prime Group Realty Trust
77 West Wacker Drive, Suite 3900
Chicago, Illinois 60601
Attn: James Hoffman

And to: Jones Day
77 West Wacker Drive, Suite 3500
Chicago, Illinois 60601-1692
Attn: Dan B. Miller

Section 10. Illinois Law. This Agreement has been negotiated, executed and delivered at Chicago, Illinois, and shall be construed and enforced in accordance with the laws of Illinois (but not including the conflict of laws provisions of Illinois law).

Section 11. Benefited Parties; No Third-Party Beneficiaries. This Agreement, and the benefits and obligations of 401 and 330 provided for herein, shall run with the 401 Property and the 330 Property, respectively, and shall be binding upon and inure to the benefit solely of Bovis, 330, 401, the City and their respective successors in interest, assigns, and such parties' respective legal representatives (collectively, the "Benefited Parties"). This Agreement and the terms hereof are intended solely for the benefit of the Benefited Parties as expressly provided for herein. No other person shall have any rights, responsibilities, or obligations hereunder nor may such person enforce any of the terms or be entitled to any of the benefits hereof.

Section 12. Estoppel. Upon the reasonable request of Bovis, 330 or 401, any party shall deliver for the benefit of the requesting person or its lenders, purchasers, investors, and major tenants an estoppel certificate concerning the status of matters under this Agreement, including actual knowledge of defaults under this Agreement and such other matters reasonably requested by any party.

Section 13. Joint and Several Liability. To the extent there are instances in this Agreement which impose obligations on both 401 and Bovis, each of 401 and Bovis shall be jointly and severally liable for such obligations under this Agreement; otherwise, the obligations of each of 401 or Bovis shall be several.

Section 14. Authority and Validity. Bovis, 330, 401 and the City each represents and warrant to one another that (i) this Agreement has been duly authorized, executed and delivered by it and (ii) this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms. This Agreement may not be amended, modified, released or terminated by any party to this Agreement without the prior written consent of all parties hereto.

EXECUTION APPEARS ON FOLLOWING PAGE

BOVIS LAND LEASE, INC.

401 NORTH WABASH VENTURE, LLC

By: Paul Johnson
Name: Paul A. Johnson
Title: General Sales Partner

By: _____
Name: _____
Title: _____

330 N. WABASH AVENUE, L.L.C.

By: 330 N. Wabash Mezzanine, L.L.C.

By: Prime Group Realty, L.P., its
Administrative Member

By: Prime Group Realty Trust, its
Managing General Partner

By: _____
Name: _____
Title: _____

BOVIS LAND LEASE, INC.

By: _____
Name: _____
Title: _____

401 NORTH WABASH VENTURE, LLC

By: _____
Name: Russell Flicka
Title: GP

330 N. WABASH AVENUE, L.L.C.

By: 330 N. Wabash Mezzanine, L.L.C.

By: Prime Group Realty, L.P., its
Administrative Member

By: Prime Group Realty Trust, its
Managing General Partner

By: _____
Name: _____
Title: _____

BOVIS LAND LEASE, INC.

401 NORTH WABASH VENTURE, LLC

By: _____
Name: _____
Title: _____


By: _____
Name: _____
Title: _____

330 N. WABASH AVENUE, L.L.C.

By: 330 N. Wabash Mezzanine, L.L.C.

By: Prime Group Realty, L.P., its
Administrative Member

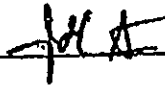
By: Prime Group Realty Trust, its
Managing General Partner

By: 
Name: Jeffrey A. Patterson
Title: President & CEO

JOINDER

The City of Chicago, by the Commissioner of the Department of Transportation, hereby joins in the execution of this Agreement for the purpose of agreeing to act as an arbitrator pursuant to Section 1(b) of this Agreement, and for no other purpose.

City of Chicago
Commissioner of the Department of Transportation

By: 

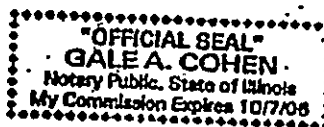
STATE OF Illinois)
) SS
COUNTY OF Cook)

I, Gale A. Cohen, Notary Public in and for said County, in the State
aforesaid, DO HEREBY CERTIFY that Paul A. James, the Secretary of
BOVIS LEND LEASE, INC., a Florida corporation, personally known to me to be the same
person whose name is subscribed to the foregoing instrument as such
appeared before me and acknowledged that (s)he signed and delivered the said instrument as
his/her own free and voluntary act, and as the free and voluntary act of said corporation, for the
uses and purposes therein set forth.

Given under my hand and seal this 11th day of January, 2005.

Gale A. Cohen
Notary Public

My Commission Expires: 10/7/06



STATE OF _____)
) SS
COUNTY OF _____)

I, _____, Notary Public in and for said County, in the State
aforesaid, DO HEREBY CERTIFY that _____, the _____ of 401
NORTH WABASH VENTURE, LLC, a Delaware limited liability company, personally known
to me to be the same person whose name is subscribed to the foregoing instrument as such
appeared before me and acknowledged that (s)he signed and delivered the
said instrument as his/her own free and voluntary act, and as the free and voluntary act of said
company, for the uses and purposes therein set forth.

Given under my hand and seal this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

STATE OF _____)
) SS
COUNTY OF _____)

I, _____, Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, the _____ of BOVIS LEND LEASE, INC., a Florida corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me and acknowledged that (s)he signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal this _____ day of _____, 2005.

Notary Public

My Commission Expires: _____

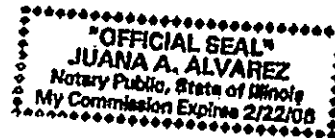
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, JUANA A. ALVAREZ, Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that RUSSELL FLICKER, the EXECUTIVE VP of 401 NORTH WABASH VENTURE, LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me and acknowledged that (s)he signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and seal this 11th day of JANUARY, 2005.

Juana A. Alvarez
Notary Public

My Commission Expires: 2/22/06



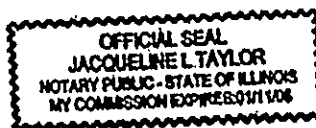
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Jacqueline L Taylor, Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jeffrey A. Patterson the President of Prime Group Realty Trust, a Maryland real estate investment trust, the Managing General Partner of Prime Group Realty, L.P., a Delaware limited partnership, the Administrative Member or 330 N. Wabash Mezzanine, L.L.C., a Delaware limited liability company, the general partner of 330 N. WABASH AVENUE, L.L.C., a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me and acknowledged that (s)he signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and seal this 7th day of January, 2005.

Jacqueline L Taylor
Notary Public

My Commission Expires: 1/11/2006



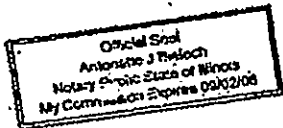
STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

I, Antoinette J Bielech, Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Miguel d'Escoto, the Commissioner of the Department of Transportation of the City of Chicago, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Commissioner, appeared before me and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and seal this 25th day of January 2005.

Antoinette J Bielech
Notary Public

My Commission Expires: 9/02/08



CHI-1452934v8

EXHIBIT A

LEGAL DESCRIPTION OF 401 PROPERTY

PARCEL 1:

A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET AND ALONG THE NORTHERLY LINE OF SAID PARCEL 17 A DISTANCE OF 272.18 FEET;

THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF PARCEL 17 A DISTANCE OF 22.62 FEET TO A POINT;

THENCE SOUTH 60 DEGREES 01 MINUTE 51 SECONDS WEST, A DISTANCE OF 3.97 FEET TO A POINT;

THENCE CONTINUING SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST, A DISTANCE OF 43.72 FEET;

THENCE SOUTH 55 DEGREES 51 MINUTES 35 SECONDS WEST, A DISTANCE OF 43.85 FEET;

THENCE SOUTH 52 DEGREES 21 MINUTES 58 SECONDS WEST; A DISTANCE OF 32.82 FEET;

THENCE SOUTH 49 DEGREES 32 MINUTES 01 SECOND WEST, A DISTANCE OF 32.53 FEET;

THENCE SOUTH 47 DEGREES 37 MINUTES 29 SECONDS WEST, A DISTANCE OF 51.47 FEET;

THENCE SOUTH 47 DEGREES 01 MINUTE 53 SECONDS WEST, A DISTANCE OF 2.033 FEET;

THENCE SOUTH 47 DEGREES 48 MINUTES 32 SECONDS WEST, A DISTANCE OF 42.61 FEET;

THENCE SOUTH 49 DEGREES 17 MINUTES 23 SECONDS WEST, A DISTANCE OF 44.057 FEET;

THENCE SOUTH 53 DEGREES 26 MINUTES 39 SECONDS WEST, A DISTANCE OF 24.308 FEET;

THENCE SOUTH 00 DEGREES 09 MINUTES 40 SECONDS WEST, A DISTANCE OF 116.60 FEET;

THENCE SOUTH 22 DEGREES 24 MINUTES 30 SECONDS EAST, A DISTANCE OF 34.47 FEET;

THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST, A DISTANCE OF 105.06 FEET;

CIT-145293478

A-1

THENCE SOUTH 39 DEGREES 30 MINUTES 25 SECONDS EAST, A DISTANCE OF 46.62 FEET TO A POINT ON THE NORTHERLY DOCK LINE OF THE CHICAGO RIVER;

THENCE NORTH 48 DEGREES 44 MINUTES 55 SECONDS EAST, A DISTANCE OF 401.26 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO AN ANGLE POINT IN SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER;

THENCE NORTH 62 DEGREES 25 MINUTES 37 SECONDS EAST, A DISTANCE OF 100.64 FEET ALONG SAID NORTHERLY DOCK LINE OF THE CHICAGO RIVER TO A POINT ON THE WEST LINE OF NORTH RUSH STREET;

THENCE NORTH 00 DEGREES 18 MINUTES 37 SECONDS EAST, A DISTANCE OF 104.51 FEET ALONG THE WEST LINE OF NORTH RUSH STREET TO THE POINT OF BEGINNING, ALL IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS.

PARCEL 2:

ALL THE LAND, PROPERTY AND SPACE LYING ABOVE A HORIZONTAL PLANE WHICH IS 22.00 FEET ABOVE THE CHICAGO CITY DATUM AND BELOW A HORIZONTAL PLANE WHICH IS 150 FEET ABOVE THE CHICAGO CITY DATUM, AND WITHIN THE VERTICAL PROJECTION OF THE BOUNDARY LINE OF A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN BEING THAT PART OF EAST NORTH WATER STREET, EAST KINZIE STREET AND NORTH WABASH AVENUE BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE WEST LINE OF NORTH RUSH STREET AS ESTABLISHED BY ORDINANCE PASSED MAY 27, 1955;

THENCE SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, SAID SOUTH LINE OF EAST NORTH WATER STREET BEING ALSO THE NORTH LINE OF A PARCEL OF LAND DENOTED AS PARCEL 17 IN AN ORDINANCE "PROVIDING FOR THE CONSTRUCTION OF A BRIDGE ACROSS THE MAIN BRANCH OF THE CHICAGO RIVER AT NORTH WABASH AVENUE" PASSED BY THE CHICAGO CITY COUNCIL JULY 29, 1930, A DISTANCE OF 213.34 FEET TO THE POINT OF BEGINNING FOR THE PARCEL OF LAND HEREINAFTER DESCRIBED;

THENCE CONTINUING SOUTH 78 DEGREES 25 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF EAST NORTH WATER STREET, A DISTANCE OF 58.74 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL 17, SAID POINT BEING ALSO THE POINT OF INTERSECTION OF THE SOUTH LINE OF EAST NORTH WATER STREET WITH THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE;

A-2

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THENCE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST ALONG THE SOUTHEASTERLY RIGHT OF WAY LINE OF NORTH WABASH AVENUE, SAID SOUTHEASTERLY RIGHT OF WAY LINE BEING ALSO THE NORTHWESTERLY LINE OF AFORESAID PARCEL 17, A DISTANCE OF 22.62 FEET TO A POINT;

THENCE SOUTH 60 DEGREES 01 MINUTES 51 SECONDS WEST ALONG A STRAIGHT LINE, A DISTANCE OF 18.45 FEET TO A POINT;

THENCE NORTHERLY, NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG THE ARC OF A CIRCLE WHICH HAS A RADIUS OF 50.00 FEET, A CHORD OF 94.53 FEET AND A CHORD BEARING OF NORTH 64 DEGREES 20 MINUTES 45 SECONDS EAST, AN ARC DISTANCE OF 123.85 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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A-3

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TOB-EF-00008520

EXHIBIT B

LEGAL DESCRIPTION OF 330 PROPERTY

PARCEL 1:

ALL THAT CERTAIN PARCEL OF LAND CONSISTING OF A PART OF LOT 9 IN BLOCK 2 IN KINZIE'S ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID PARCEL OF LAND BEING BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE EAST LINE OF NORTH STATE STREET AND RECOGNIZED IN THE WABASH AVENUE BRIDGE ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON JULY 29, 1930 WITH THE PRESENT NORTHERLY DOCK LINE OF THE CHICAGO RIVER AS RECOGNIZED IN SAID ORDINANCE, SAID POINT BEING SOUTH 0 DEGREES 9 MINUTES 40 SECONDS WEST 475.69 FEET FROM THE NORTHWEST CORNER OF SAID BLOCK 2 OF KINZIE'S ADDITION TO CHICAGO; THENCE NORTH 63 DEGREES 2 MINUTES 40 SECONDS EAST ALONG SAID NORTHERLY DOCK LINE 177.70 FEET; THEN NORTH 22 DEGREES 24 MINUTES 30 SECONDS WEST 68.58 FEET; THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST 18.75 FEET; THENCE NORTH 22 DEGREES 24 MINUTES 30 SECONDS WEST 4.25 FEET; THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST 1.62 FEET; THENCE NORTH 22 DEGREES 24 MINUTES 30 SECONDS WEST A DISTANCE OF 119.64 FEET; THENCE NORTH 32 DEGREES 10 MINUTES 50 SECONDS EAST A DISTANCE OF 30.05 FEET FOR A PLACE OF BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID HEREINAFTER DESCRIBED PARCEL OF LAND; THENCE CONTINUING NORTH 32 DEGREES 10 MINUTES 50 SECONDS EAST A DISTANCE OF 23.745 FEET TO A POINT 131.61 FEET (MEASURED PERPENDICULARLY) EAST FROM SAID EAST LINE OF NORTH STATE STREET; THENCE SOUTH 0 DEGREES 9 MINUTES 40 SECONDS WEST PARALLEL WITH THE AFORESAID EAST LINE OF NORTH STATE STREET, A DISTANCE OF 10.74 FEET; THENCE SOUTH 53 DEGREES 26 MINUTES 39 SECONDS WEST A DISTANCE OF 7.50 FEET TO THE SOUTHWESTERLY CORNER OF AN EXISTING STEEL COLUMN; THENCE CONTINUING SOUTH 53 DEGREES 26 MINUTES 39 SECONDS WEST, A DISTANCE OF 8.21 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS, AND

PARCEL 2:

ALL THAT CERTAIN PARCEL OF LAND CONSISTING OF A PART OF LOT 8 AND A PART OF LOT 9 IN BLOCK 2 TOGETHER WITH A PART OF VACATED NORTH WATER STREET ADJOINING SAID BLOCK 2, ALL IN KINZIE'S ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID PARCEL OF LAND BEING BOUNDED AND DESCRIBED AS FOLLOWS:

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COMMENCING AT THE POINT OF INTERSECTION OF THE EAST LINE OF NORTH STATE STREET AS RECOGNIZED IN THE WABASH AVENUE BRIDGE ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON JULY 29, 1930 WITH THE PRESENT NORTHERLY DOCK LINE OF THE CHICAGO RIVER, AS RECOGNIZED IN SAID ORDINANCE, SAID POINT BEING SOUTH 0 DEGREES 9 MINUTES 40 SECONDS WEST 475.69 FEET FROM THE NORTHWEST CORNER OF SAID BLOCK 2 OF KINZIE'S ADDITION TO CHICAGO; THENCE NORTH 63 DEGREES 2 MINUTES 40 SECONDS EAST ALONG SAID NORTHERLY DOCK LINE, 177.70 FEET; THENCE NORTH 22 DEGREES 24 MINUTES 30 SECONDS WEST 68.58 FEET; THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST 18.75 FEET; THENCE NORTH 22 DEGREES 24 MINUTES 30 SECONDS WEST 4.25 FEET; THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST 1.62 FEET; THENCE NORTH 22 DEGREES 24 MINUTES 30 SECONDS WEST 45.38 FEET TO A POINT 131.61 FEET (MEASURED PERPENDICULARLY) EAST FROM SAID EAST LINE OF NORTH STATE STREET FOR A PLACE OF BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID HEREINAFTER DESCRIBED PARCEL OF LAND; THENCE CONTINUING NORTH 22 DEGREES 24 MINUTES 30 SECONDS WEST, A DISTANCE OF 74.26 FEET; THENCE NORTH 32 DEGREES 10 MINUTES 50 SECONDS EAST, A DISTANCE OF 30.005 FEET; THENCE NORTH 53 DEGREES 26 MINUTES 39 SECONDS EAST, A DISTANCE OF 8.210 FEET TO THE SOUTHWESTERLY CORNER OF AN EXISTING STEEL COLUMN; THENCE CONTINUING NORTH 53 DEGREES 26 MINUTES 39 SECONDS EAST, A DISTANCE OF 7.50 FEET; THENCE SOUTH 0 DEGREES 9 MINUTES 40 SECONDS WEST PARALLEL WITH THE AFORESAID EAST LINE OF NORTH STATE STREET, A DISTANCE OF 103.41 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS, AND

PARCEL 3:

A TRACT OF LAND IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN COMPRISING THAT PART OF BLOCK 2 AND WATER LOTS 2 TO 8 BOTH INCLUSIVE IN KINZIE'S ADDITION TO CHICAGO, VACATED CARROLL AVENUE (FORMERLY KNOWN AS NEW NORTH WATER STREET) AND VACATED NORTH WATER STREET IN THE CITY OF CHICAGO MORE PARTICULARLY DESCRIBED AS FOLLOWS: TO WIT:

BEGINNING AT THE POINT OF INTERSECTION OF THE EAST LINE OF NORTH STATE STREET AS RECOGNIZED IN THE WABASH AVENUE BRIDGE ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON JULY 29, 1930 WITH THE PRESENT NORTHERLY DOCK LINE OF THE CHICAGO RIVER AS RECOGNIZED IN SAID ORDINANCE, SAID POINT BEING SOUTH 0 DEGREES 9 MINUTES 40 SECONDS WEST 475.69 FEET FROM THE NORTHWEST CORNER OF SAID BLOCK 2 OF KINZIE'S ADDITION TO CHICAGO; THENCE NORTH 63 DEGREES 2 MINUTES 40 SECONDS EAST ALONG SAID NORTHERLY DOCK LINE 177.70 FEET; THENCE NORTH 22 DEGREES 24 MINUTES 30 SECONDS WEST 68.58 FEET; THENCE NORTH 67

B-2

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DEGREES 35 MINUTES 30 SECONDS EAST 18.75 FEET; THENCE NORTH 22 DEGREES 24 MINUTES 30 SECONDS WEST 4.25 FEET; THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST 1.62 FEET; THENCE NORTH 22 DEGREES 24 MINUTES 30 SECONDS WEST 119.64 FEET TO A POINT 244.60 FEET SOUTHWESTERLY MEASURED ALONG A LINE WHICH IS SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST FROM A POINT IN THE SOUTH LINE OF EAST KINZIE STREET AS RECOGNIZED IN SAID WABASH AVENUE BRIDGE ORDINANCE WHICH POINT IS 232.81 FEET EAST OF THE NORTHWEST CORNER OF SAID BLOCK 2 OF KINZIE'S ADDITION TO CHICAGO; THENCE NORTH 32 DEGREES 10 MINUTES 50 SECONDS EAST TO A POINT WHICH IS 98.75 FEET SOUTHWESTERLY (MEASURED ALONG THE LINE SOUTH 32 DEGREES 10 MINUTES 50 SECONDS WEST) FROM SAID POINT IN THE SOUTH LINE OF EAST KINZIE STREET WHICH POINT IS 232.81 FEET EAST OF THE NORTHWEST CORNER OF SAID BLOCK 2 OF KINZIE'S ADDITION TO CHICAGO; THENCE NORTHEASTERLY ALONG A LINE FORMING AN ANGLE OF 15 DEGREES 31 MINUTES 46 SECONDS TO THE RIGHT WITH THE LAST DESCRIBED COURSE 66.93 FEET; THENCE NORTHEASTWARDLY ALONG THE ARC OF A CIRCLE CONVEX TO THE NORTHWEST HAVING A RADIUS OF 728.78 FEET AND TANGENT TO THE LAST DESCRIBED COURSE 59.35 FEET TO A POINT ON THE SOUTH LINE OF EAST KINZIE STREET WHICH POINT IS 275.21 FEET EAST OF THE NORTHWEST CORNER OF SAID BLOCK 2 OF KINZIE'S ADDITION TO CHICAGO; THENCE WEST ALONG THE SOUTH LINE OF KINZIE STREET 275.21 FEET TO THE NORTHWEST CORNER OF SAID BLOCK 2 OF KINZIE'S ADDITION TO CHICAGO; THENCE SOUTH 0 DEGREES 9 MINUTES 40 SECONDS WEST ALONG THE WEST LINE OF SAID BLOCK 2 OF KINZIE'S ADDITION TO CHICAGO AND THE EAST LINE OF STATE STREET 475.69 FEET TO THE PLACE OF BEGINNING, AND

PARCEL 4:

ALL THAT CERTAIN PARCEL OF LAND CONSISTING OF A PART OF LOT 8 AND PART OF LOT 9 IN BLOCK 2 TOGETHER WITH PART OF VACATED NORTH WATER STREET ADJOINING SAID BLOCK 2, ALL IN KINZIE'S ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID PARCEL OF LAND BEING BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE EAST LINE OF NORTH STATE STREET AS RECOGNIZED IN THE WABASH AVENUE BRIDGE ORDINANCE PASSED BY THE CITY COUNCIL OF THE CITY OF CHICAGO ON JULY 29, 1930 WITH THE PRESENT NORTHERLY DOCK LINE OF THE CHICAGO RIVER, AS RECOGNIZED IN SAID ORDINANCE, SAID POINT BEING SOUTH 0 DEGREES 09 MINUTES 40 SECONDS WEST 475.69 FEET FROM THE NORTHWEST CORNER OF SAID BLOCK 2 OF KINZIE'S ADDITION TO CHICAGO; THENCE NORTH 63 DEGREES 02 MINUTES 40 SECONDS EAST ALONG SAID NORTHERLY DOCK LINE, 177.70 FEET; THENCE NORTH 22 DEGREES 24 MINUTES 30 SECONDS WEST, 68.58 FEET; THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST, 18.75 FEET; THENCE NORTH 22

B-3

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DEGREES 24 MINUTES 30 SECONDS WEST, 4.25 FEET; THENCE NORTH 67 DEGREES 35 MINUTES 30 SECONDS EAST, 1.62 FEET; THENCE NORTH 22 DEGREES 24 MINUTES 30 SECONDS WEST, 45.38 FEET FOR A PLACE OF BEGINNING; THENCE NORTH 0 DEGREES 09 MINUTES 40 SECONDS EAST 103.41 FEET; THENCE NORTH 53 DEGREES 26 MINUTES 39 SECONDS EAST, 5.22 FEET; THENCE SOUTH 0 DEGREES 09 MINUTES 40 SECONDS WEST ALONG A LINE PARALLEL WITH AND 135.80 FEET (BY RECTANGULAR MEASUREMENT) EAST OF THE AFORESAID EAST LINE OF NORTH STATE STREET, 116.60 FEET; THENCE NORTH 22 DEGREES 24 MINUTES 30 SECONDS WEST, 10.91 FEET TO THE PLACE OF BEGINNING IN COOK COUNTY, ILLINOIS.

Permanent Index Numbers: 17-10-135-009-0000
17-10-135-013-0000
17-10-135-014-0000
17-10-135-019-0000
17-10-135-021-0000
17-10-135-023-0000
17-10-135-024-0000

Address of Property: 330 North Wabash, Chicago, Illinois

CH11-1452934v8

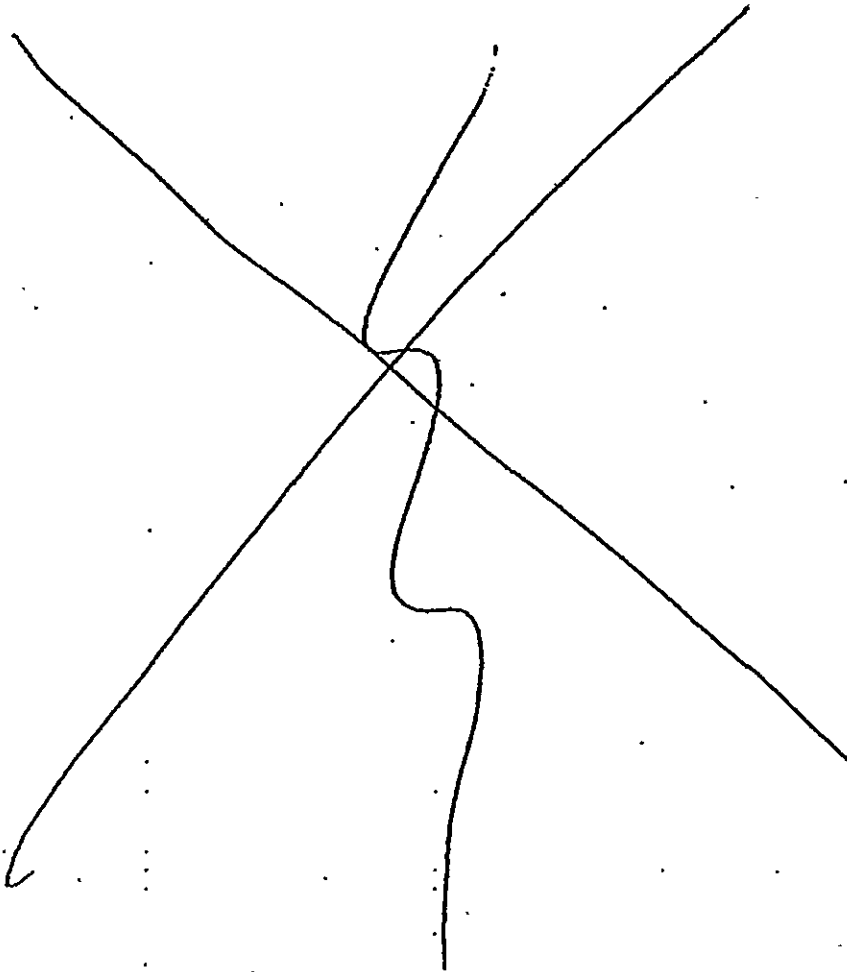
B-4

1152a

TOB-EF-00008524

EXHIBIT C
PRELIMINARY 330 WORK PLANS

See Attached.



C-1

CHI-1452934v8



Letter of Transmittal

From:
 James P. Butarazzi
 Bovis Land Lease, Inc.
 One North Wacker, Suite 850, Chicago, IL 60608

To:
 Prime Group Realty Trust
 330 North Wabash, Suite 2601
 Chicago, IL 60611

Transmittal Number: 23	
Date: January 19, 2005	Job Number: 52084800
Attention: Susan Hammer	
Re: Trump International Hotel & Tower- IBM Party Wall Bracing Scheme (Revision 2) Property Line Location Eliminated from Drawing	

We are sending you... Attached Under separate cover via Hand _____ the following items:
 Shop drawings Prints Samples Specifications
 Copy of letter Change order

Prepared by: _____

1	01.14.04	IBM Party Wall Bracing Scheme (G1.0, G1.1, S1.0, S1.1, S1.2, S3.1, S3.4, S3.5)

These are transmitted as checked below:
 For information
 For approval
 For your use
 As requested
 For review and comment
 For bids due

A. Approved as submitted
 B. Approved as noted
 C. Returned for corrections
 D.

1. Resubmit _____ copies for approval
 2. Submit _____ copies for distribution
 3. Return _____ corrected prints

Remarks _____

 Prints returned after loan to us

Copy to: Tim Snyder- Trump Organization
File- Prime Group Correspondence
Alfred J. Biorech & Co.

Signed: James P. Butarazzi
 Printed Name: James P. Butarazzi

PA02A (R)12/99 MW77

If enclosures are not as noted, please notify us at once.

Buttarazzi, James

From: Buttarazzi, James
Sent: Wednesday, January 19, 2005 2:02 PM
To: Susan Hammer (E-mail); Dale Clark (E-mail)
Cc: Tim Snyder (E-mail); Elaine Carroll (E-mail); Riebeck, Craig
Subject: Trump - Revised IBM Wall Drawings Removing Property Line From Documents

Susan,

Attached please find revised IBM wall drawings removing the property line from the documents. We have just awarded a roofing Trade Contract to James Mansfield & Sons Co. Accordingly, roofing details to follow.

Sincerely,

James P. Buttarazzi, P.E.
Senior Project Manager
Bovis Lend Lease, Inc.
One North Wacker Drive, Suite 850
Chicago, IL 60608
Telephone: 312.245.1483
Facsimile: 312.245.1379

01-14-05 IBM Temp#23 Susan Hammer
Wall Drawng... 01-19-05 IBM ...

1155a

TOB-EF-00008527

COVER SHEET

TEMPORARY WALL
@ IBM LOWER LEVEL

DATE: 11/23/24
DRAWN BY: [REDACTED]
CHECKED BY: [REDACTED]

G1.0

491 NORTH WABASH VENTURE LLC
725 FIFTH AVENUE
NEW YORK, NY 10022

330 NORTH WABASH AVE., LLC.
330 NORTH WABASH
CHICAGO, IL 60611

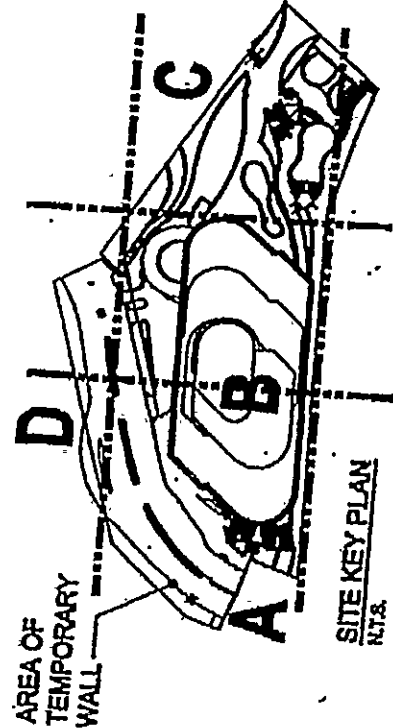
**TEMPORARY WALL @
IBM LOWER LEVEL**

SHEET INDEX

- STRUCTURAL
- G1.0 COVER SHEET
- G1.1 GENERAL NOTES & SPECIFICATIONS
- S1.0 TEMP. WALL FLOOR PLAN AREA 1'
- S1.1 TEMP. WALL FLOOR PLAN AREA 2'
- S1.2 TEMP. WALL FLOOR PLAN AREA 3'
- DELETED S2.0 WALL ELEVATION
- DELETED S3.1 WALL SECTIONS AND DETAILS
- DELETED S3.2 FRAMING DETAILS
- DELETED S3.3 PARTITION DETAILS
- S3.4 WALL SECTIONS
- S3.5 WALL SECTIONS AND ELEVATIONS

CONSULTANTS

- THE COZE GROUP, INC.
111 W. WASHINGTON - SUITE 430
CHICAGO, IL 60602
CANDOR'S NYC
PHONE NUMBER - (312) 467-7988
- WALL CONSULTING ENGINEERS LTD.
418 S. WABASH
CHICAGO, IL 60605
DANIEL POLLO
PHONE NUMBER - (312) 470-8108
- L.R. STRUCTURAL ENGINEERING, INC.
111 WASHINGTON COURT
LAKEWOOD, IL 60450
1301 LAKEVIEW
PHONE NUMBER - (312) 266-8888

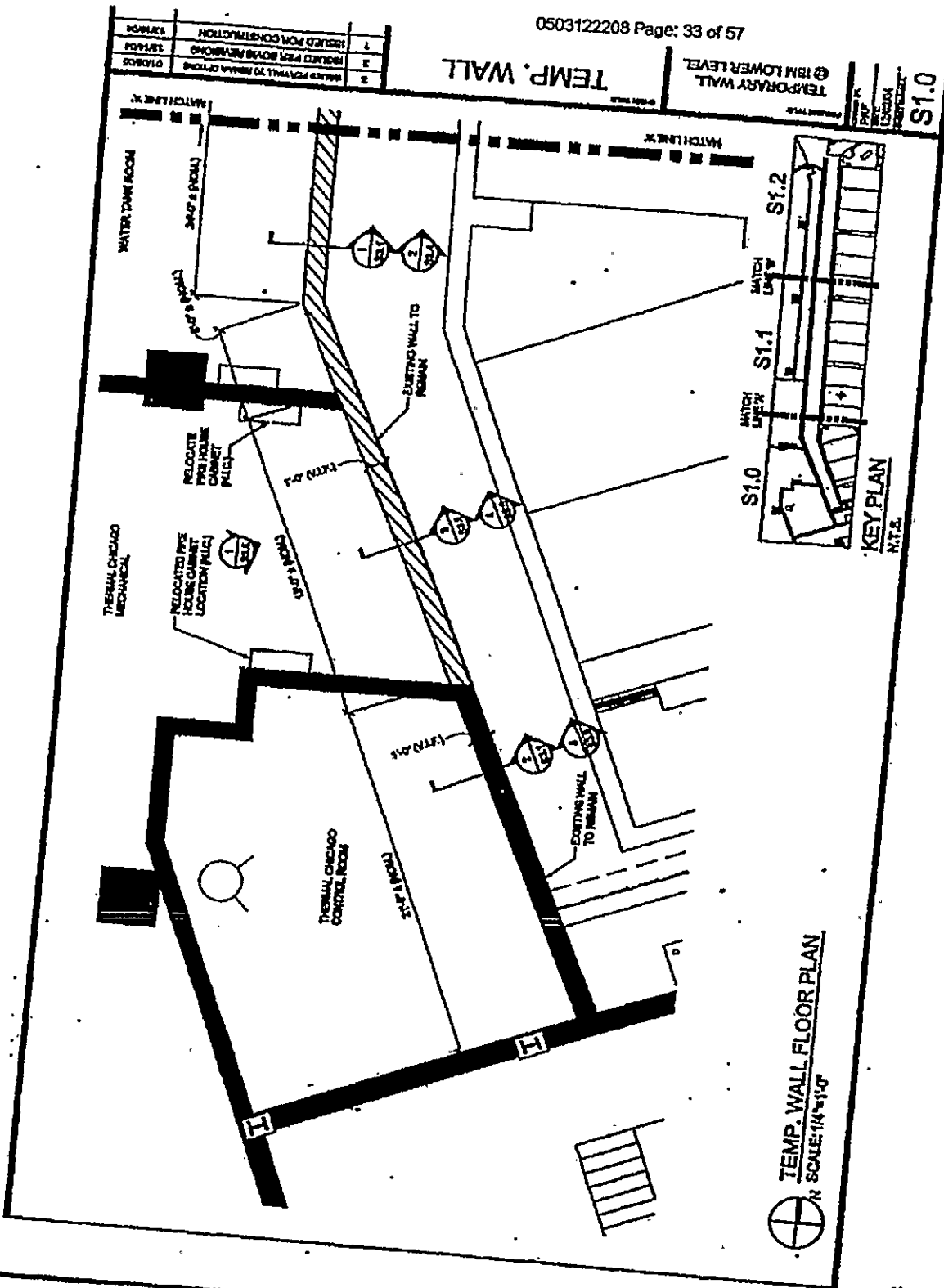


3	ISSUED FOR WALL TO REMAIN OPEN	12/15/24
2	ISSUED FOR BOOM REVISIONS	12/14/24
1	ISSUED FOR CONSTRUCTION	12/14/24

TEMP. WALL

TEMPORARY WALL
@ IBM LOWER LEVEL

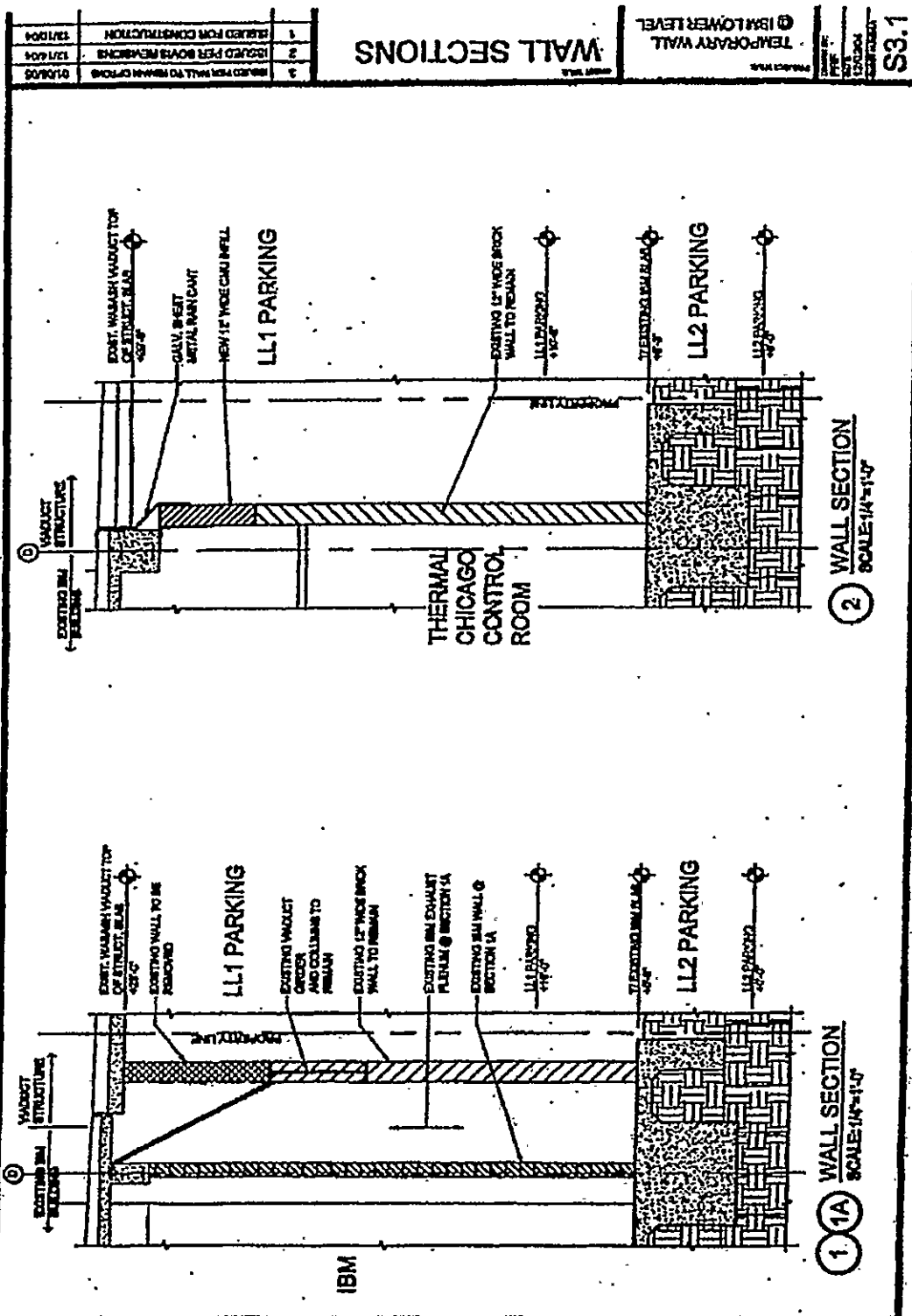
1	RELOCATED FROM CONSTRUCTION
2	RELOCATED FROM ROOM RELOCATION
3	MADE PER WALL TO REMAIN OPTION



TEMP. WALL FLOOR PLAN
SCALE: 1/4" = 1'-0"

KEY PLAN
N.T.S.

S1.0



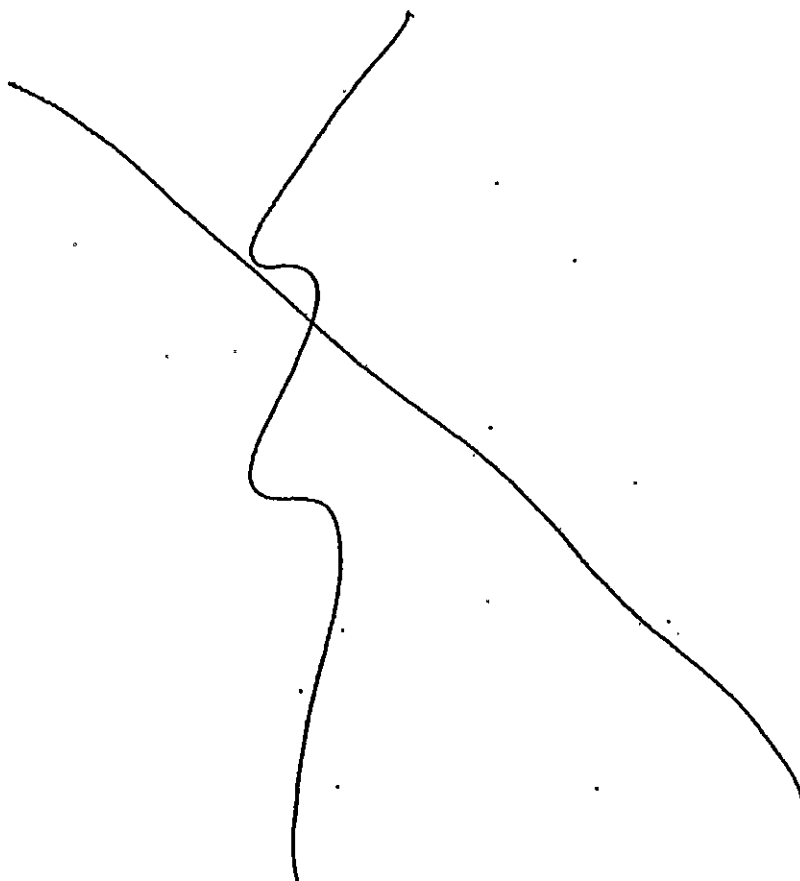
1161a

TOB-EF-00008533

EXHIBIT D

330 PROPERTY PHASING AND SCHEDULE PLAN

Schedule approved by the City with a completion date of no later than November 23, 2005.



CHI-14529448

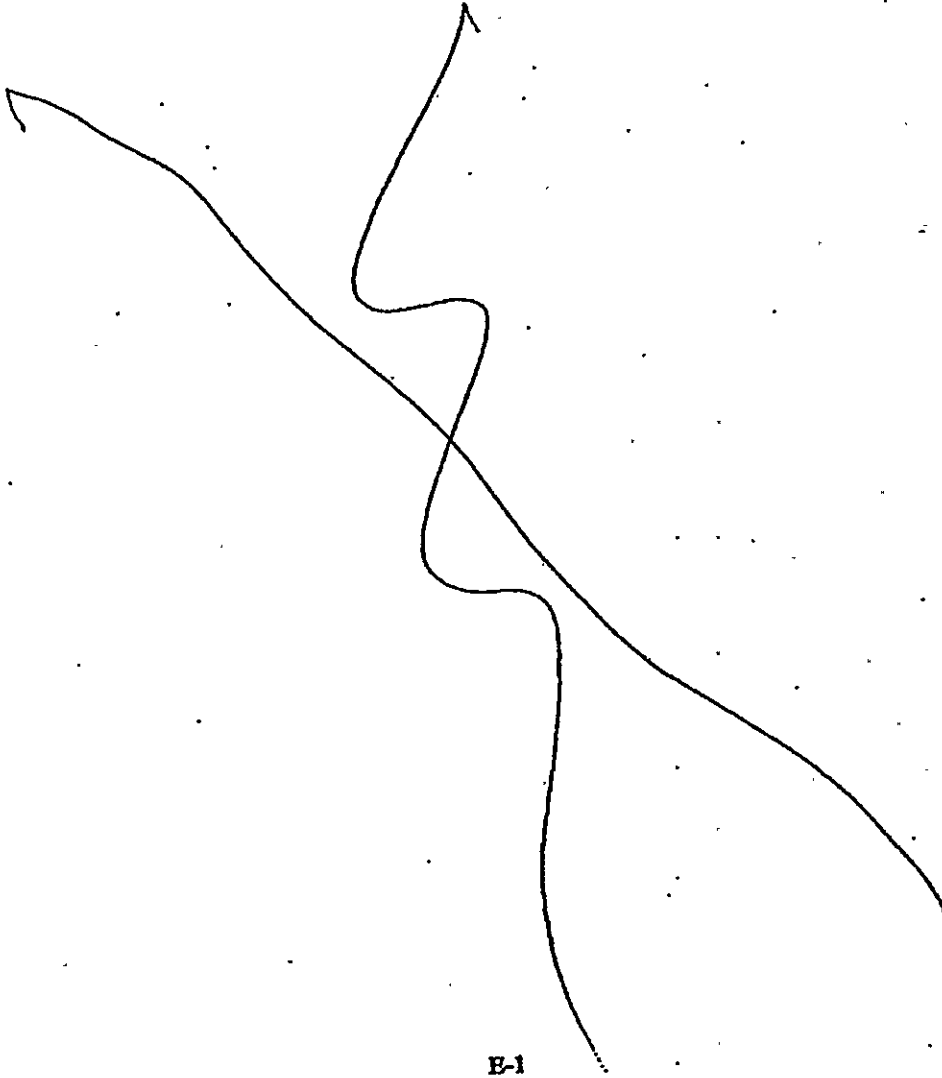
D-1

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TOB-EF-00008534

EXHIBIT E
PEDESTRIAN ACCESS BRIDGE PLANS

See Attached.



E-1

CH-1452934v8

1163a

TOB-EF-00008535



Letter of Transmittal

From: James P. Buttarazzi Bovis Land Lease, Inc. One North Wacker, Suite 850, Chicago, IL 60608	Transmittal Number: 11
To: Prime Group Realty Trust 330 North Wabash, Suite 2801 Chicago, IL 60611	Date: December 22, 2004 Job Number: 52064800
	Attention: Susan Hammer
	Re: Trump International Hotel & Tower Pedestrian Walkway Plans & Details

We are sending you... Attached Under separate cover via Messenger the following items:
 Shop drawings Prints Samples Specifications
 Copy of letter Change order

Prepared by:

1	12.22.04		Pedestrian Walkway with CDOT Approval

These are transmitted as checked below:
 For information
 For approval
 For your use
 As requested
 For review and comment
 For bids due
A. Approved as submitted
B. Approved as noted
C. Returned for corrections
D.
1. Resubmit _____ copies for approval
2. Submit _____ copies for distribution
3. Return _____ corrected prints
 Prints returned after loan to us

Remarks _____

Copy to: Tim Snyder- Trump Organization
Prime Group Cor.
 Signed: James P. Buttarazzi
 Printed Name: James P. Buttarazzi

PAD2A (R)12/08 MW97. If enclosures are not as noted, please notify us at once.

12/14/2884 11:18 16385954352

PRIME SCAFFOLD

PAGE 02

Doc-18-24 04/Edm From-BRIDGES & TRANSIT

112-744-1851

T-012 P.01/01 F-114.

CHICAGO DEPARTMENT OF TRANSPORTATION
BUREAU OF BRIDGES AND TRANSIT

FACSIMILE TRANSMITTAL SHEET

TO	FROM
ERIC RINGSTAD	Don Boice
COMPANY	DATE
PRIME SCAFFOLD	12/13/2004
FAX NUMBER	TOTAL NO OF PAGES ENCLOSED OR COVER
(630) 595-4332	1
PHONE NUMBER	PROJECT ALTERNATE NUMBER
(630) 595-2700	
RE	YOUR REFERENCE NUMBER
Walsh Vactor Temp Walkway	

- URGENT
 FOR REVIEW
 PLEASE COMMENT
 PLEASE REPLY
 PLEASE RECYCLE

NOTE/COMMENTS

Your revised submittal dated 12/8/04 is approved.

DANIEL BURKE - CHICAGO DEPARTMENT OF TRANSPORTATION
16 N. LA SALLE ST 8th
CHICAGO, IL 60602

PHONE (312) 744-3107
FAX (312) 744-3068

**PRIME SCAFFOLD
1220 N. ELLIS
BENSENVILLE, IL. 60102
630/395-2700**

RECEIVED

DEC 10 2004

**BOVIS
LEND LEASE**

12/08/04 (REPLACES PREVIOUS DRAWINGS DATED 11/24/04)

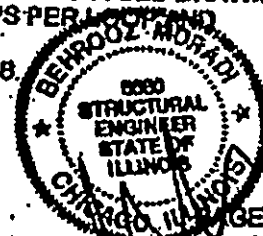
**RE: TRUMP HOTEL AND PLAZA
401 N WABASH
CHICAGO, IL
TEMPORARY PEDESTRIAN WALKWAY
IBM PARKING GARAGE TO IBM PLAZA
BOVIS LEND LEASE**

**PAGE 1: COVER PAGE AND INDEX
PAGE 2: PARTIAL PLAN - SOUTH & WEST
PAGE 3: PARTIAL PLAN - NORTH & EAST
PAGE 4: SHORING PLAN - SOUTH & WEST
PAGE 5: SHORING PLAN - NORTH & EAST
PAGE 6: ELEVATIONS "A" AND "B"
PAGE 7: ELEVATION "C"
PAGE 8: WALKWAY SECTION "D"
PAGE 9: WALL PANEL DETAILS
PAGE 10: ENLARGED PLAN - TOWER #1
PAGE 11: ENLARGED PLAN - TOWER #2
PAGE 12: ENLARGED PLAN - TOWER #3
PAGE 13: ENLARGED PLAN - TOWER #4**

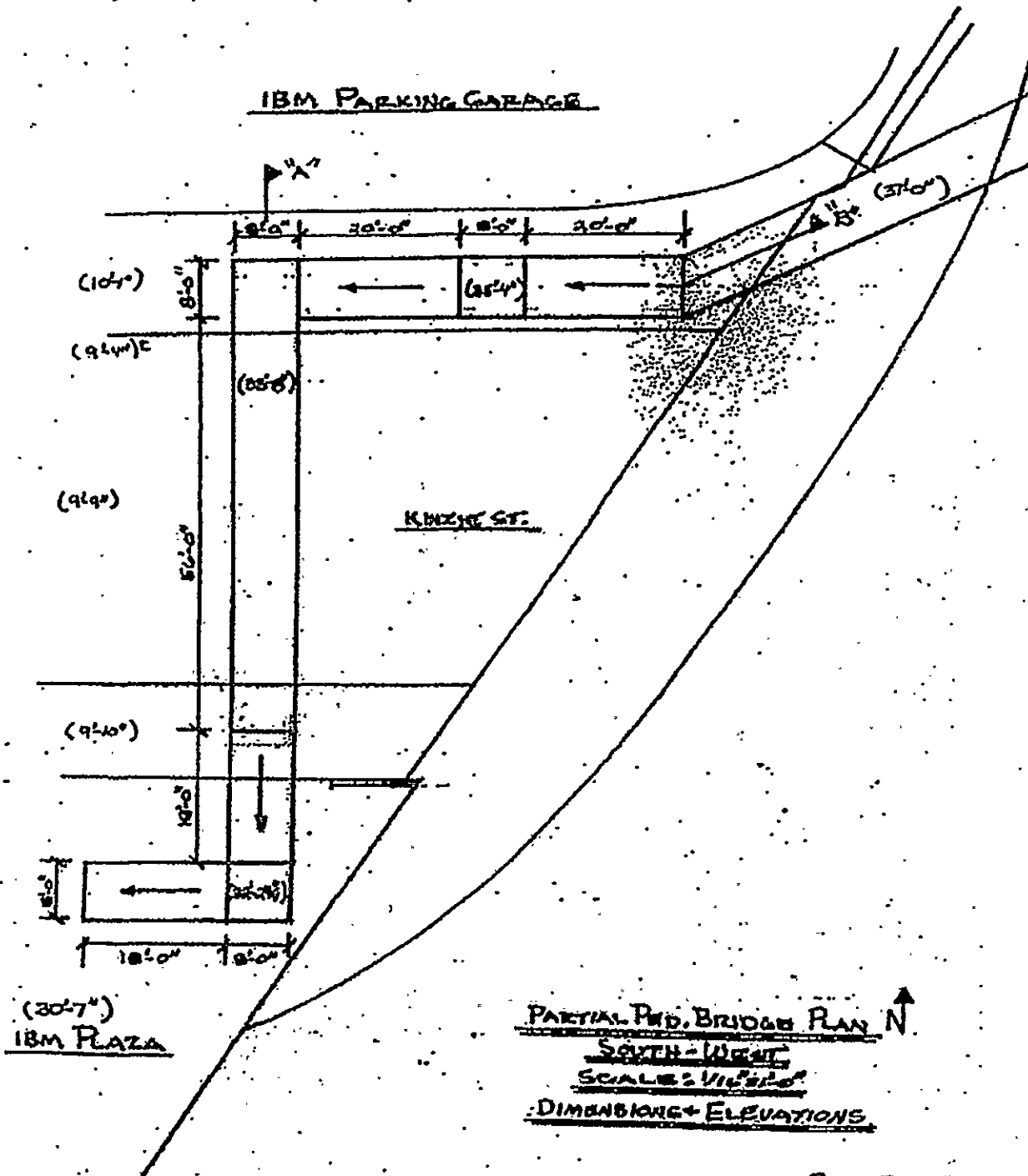
**PAGE 14: CALCS.
PAGE 15: CALCS
PAGE 16: SHORING LOAD TABLES
PAGE 17: ALLOWABLE LUMBER STRESSES
PAGE 18: CALCS.
PAGE 19: CALCS.
PAGE 20: WIRE ROPE ATTACHMENT
PAGE 21: WIRE ROPE SPECS.
PAGE 22: TURNBUCKLE SPECS.
PAGE 23: EYE NUT SPECS.
PAGE 24: ANCHOR SPECS.
PAGE 25: ANCHOR SPECS.
PAGE 26: BEAM CLIP SPECS.**

NOTES:

- 1) WALKWAY IS DESIGNED FOR A LIVE LOAD OF 85 POUNDS PER SQUARE FOOT AND A WIND LOAD OF 20 POUNDS PER SQUARE FOOT.
- 2) ALL LUMBER SHOWN ON THE ENCLOSED DRAWINGS IS A MINIMUM OF SOUTHERN YELLOW PINE #2 OR BETTER. (SEE PAGE 17)
- 3) ALL STEEL BEAMS SHOWN ON THE ENCLOSED DRAWINGS HAVE A MINIMUM YEILD STRENGTH OF 36,000 psi.
- 4) ALL CONCRETE BARRIER PADS SHOWN ON THE ENCLOSED DRAWINGS SHALL HAVE A MINIMUM 28-DAY COMPRESSIVE STRENGTH OF 3000 psi.
- 5) ALL 1/2" WIRE ROPE TIE-DOWNS (GUYS) SHOWN ON THE ENCLOSED DRAWINGS SHALL BE INSTALLED WITH A MINIMUM OF 3 FIST GRIPS PER LOOP AND TURNBUCKLES. (SEE PAGE 20)
- 6) STRUCTURE SHALL BE PAINTED AS SHOWN ON PAGE 8.



PAGE: 1 OF 28

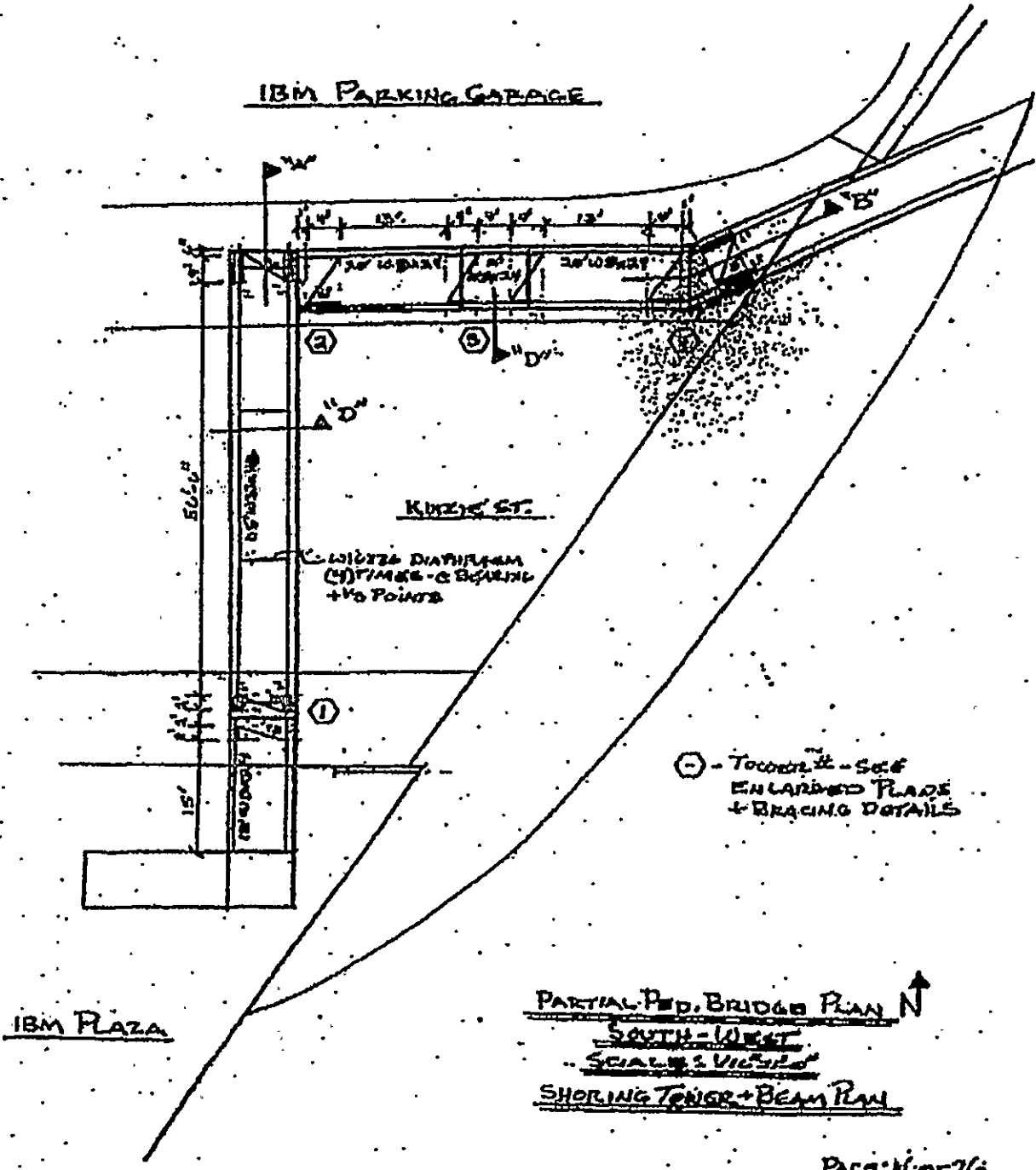


PARTIAL BRIDGE PLAN
SOUTH-WEST
SCALE: 1/4" = 1'-0"
DIMENSIONS + ELEVATIONS

PAGE: 2 OF 26

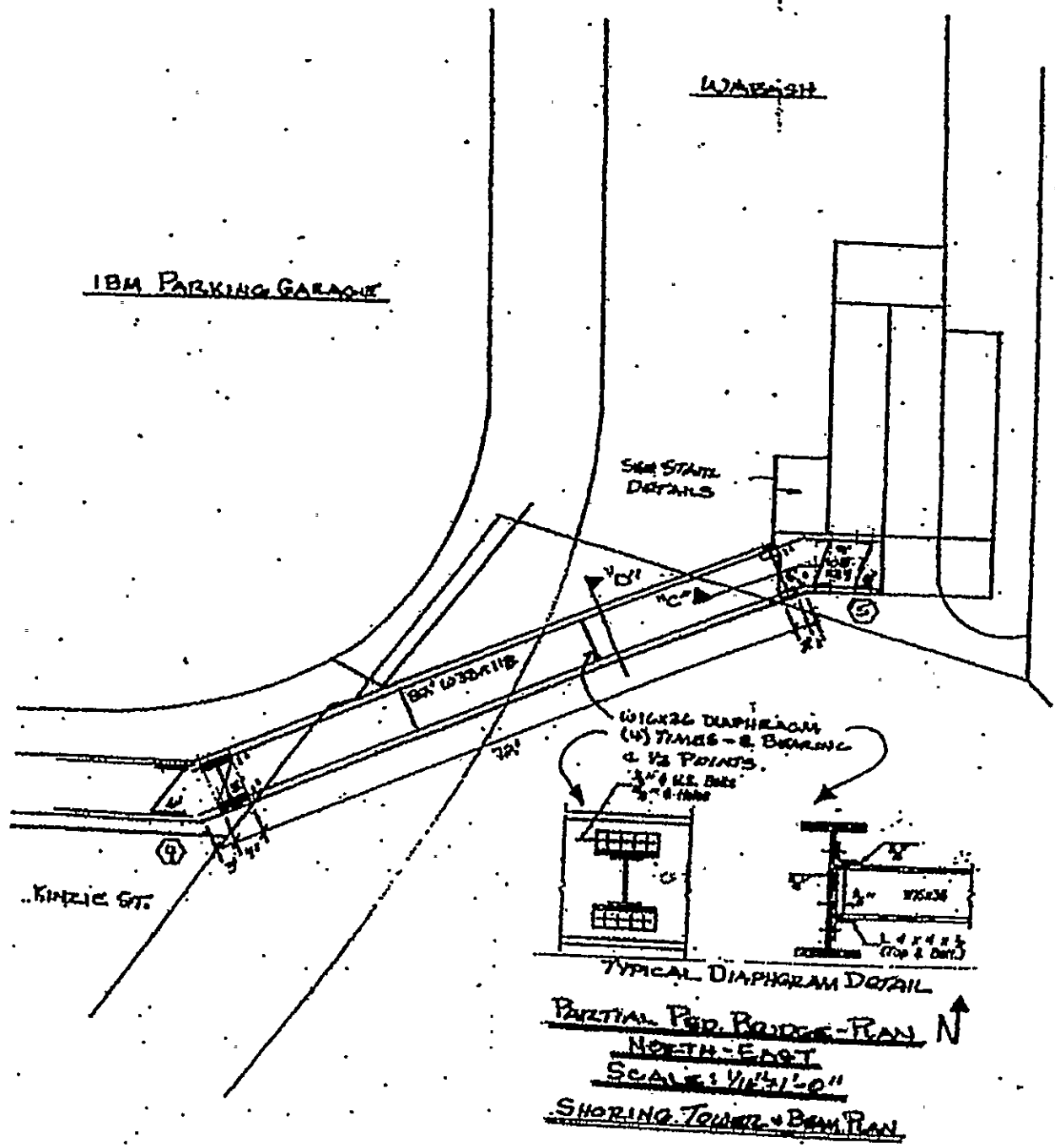
1167a

TOB-EF-00008539

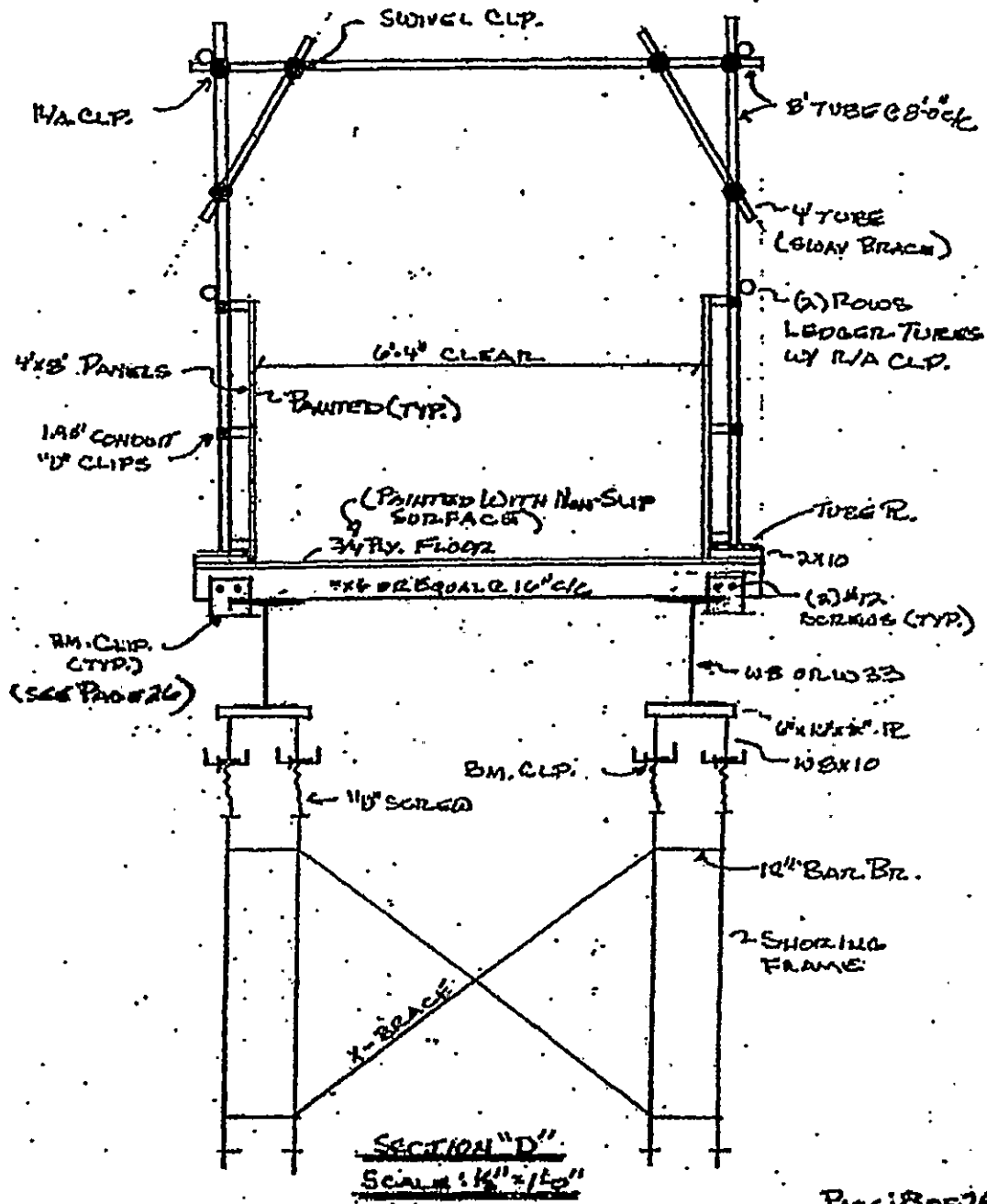


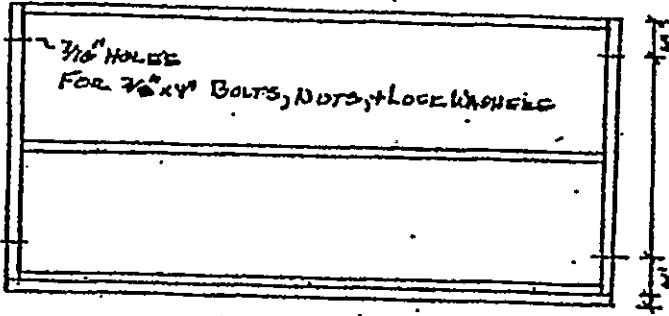
PARTIAL PED. BRIDGE PLAN N
SOUTH-WEST
SCALE 1/8"
SHORING TRUSS + BEAM PLAN

PAGE 14 OF 26

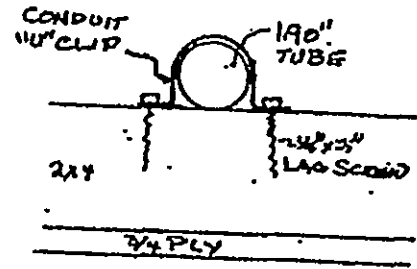


Page: 5 of 10

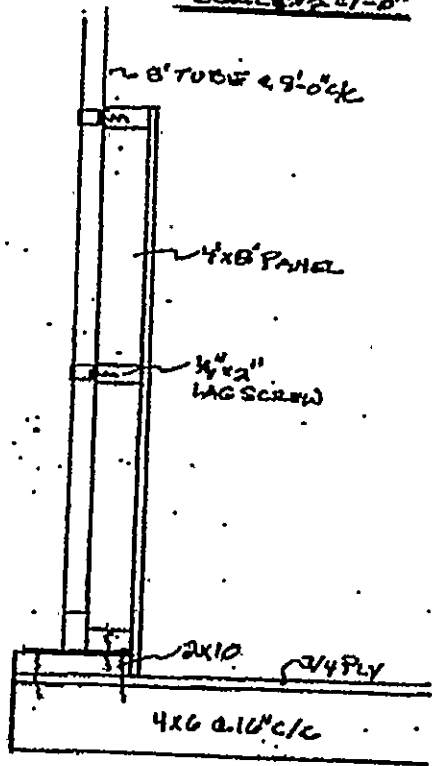




TYPICAL WALL PANEL
SCALE: 1/2\"=1'-0\"

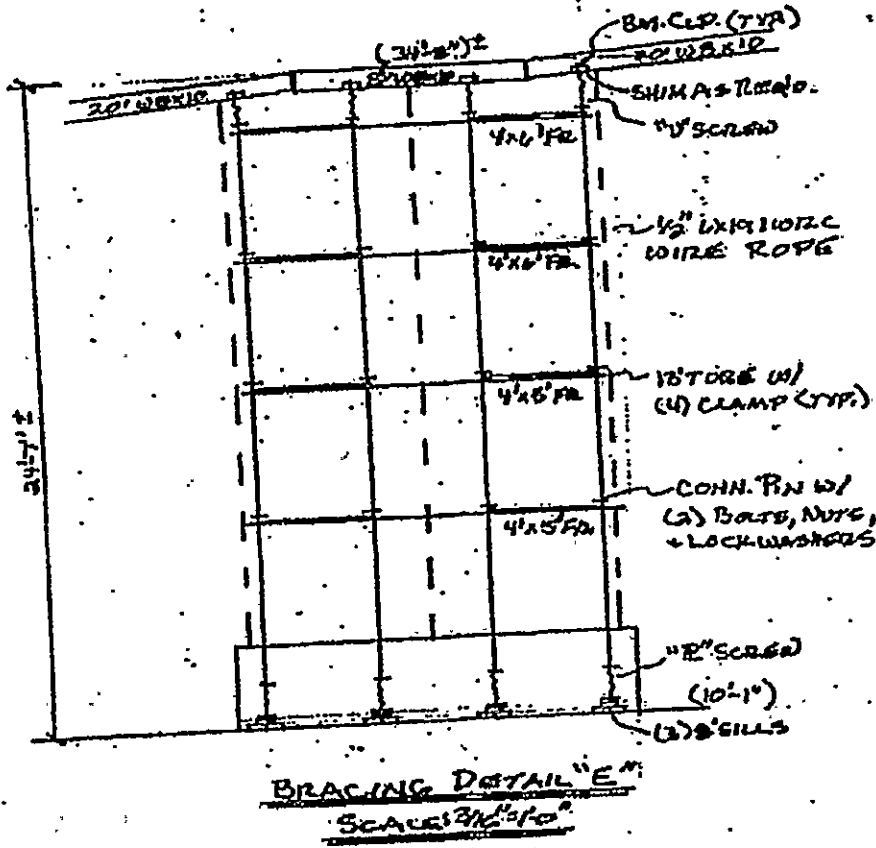
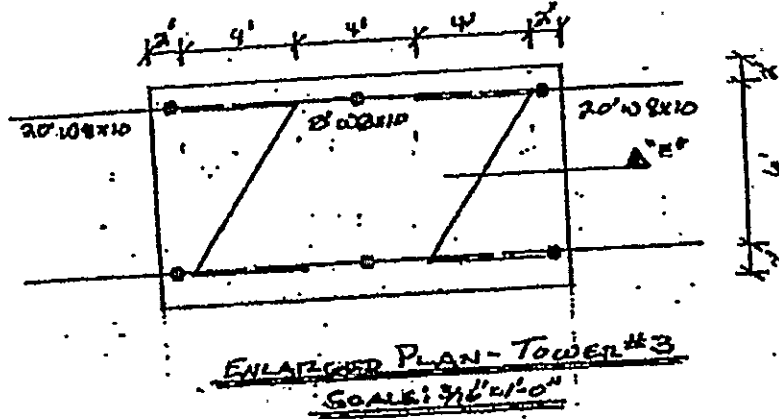


ATTACHMENT DETAIL
SCALE: 3/4\"=1'-0\"



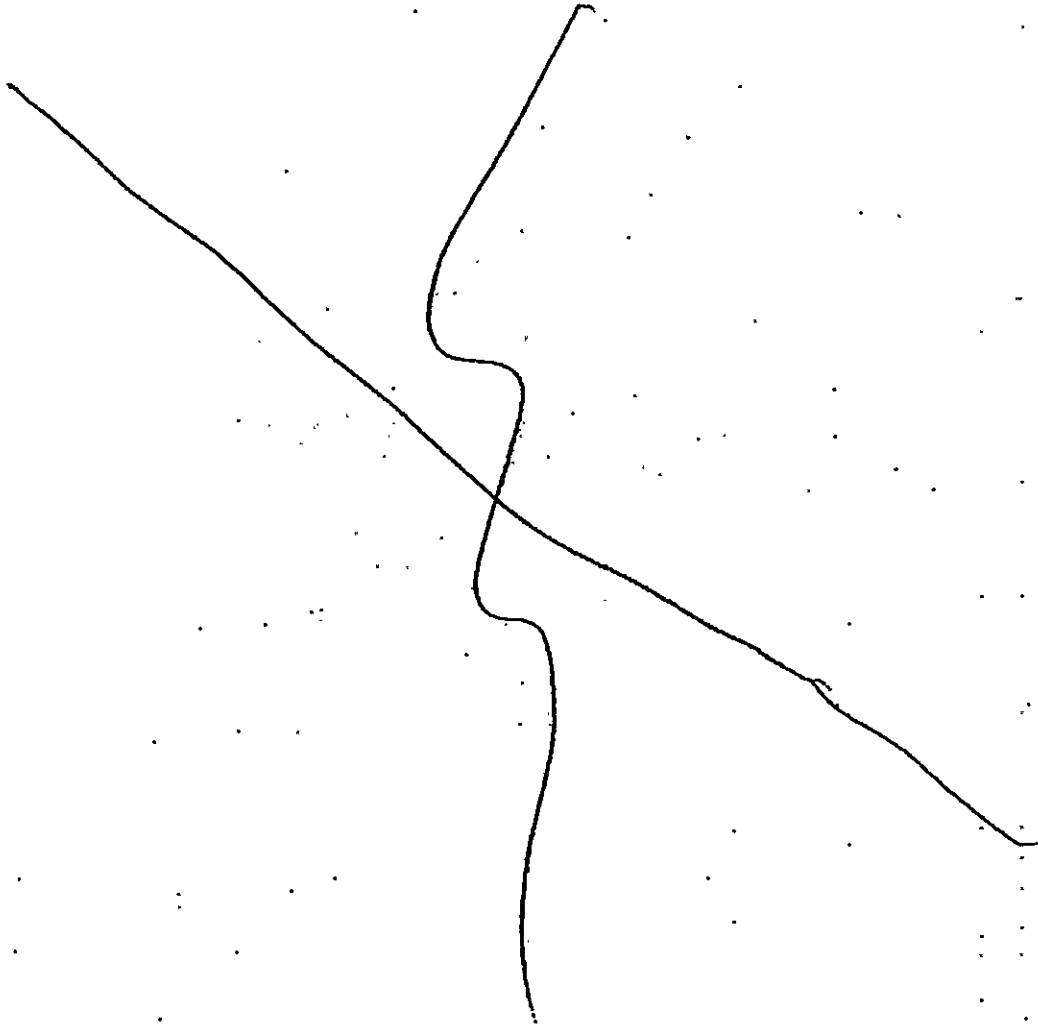
ATTACHMENT DETAIL
SCALE: 1\"=1'-0\"

Doc: 90726



PAGE: 12 OF 26

EXHIBIT E
INSURANCE REQUIREMENTS



C-1

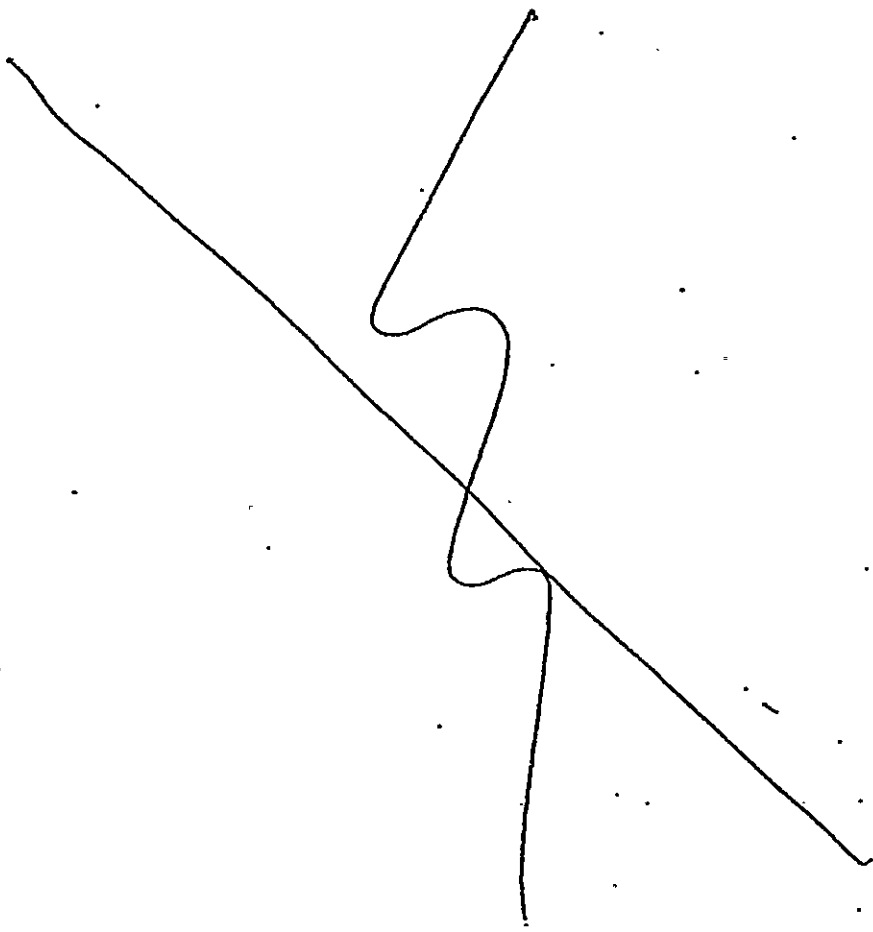
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CHI-1452934v3

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TOB-EF-00008551

EXHIBIT F
INSURANCE REQUIREMENTS

See Attached.



C-1

-CH00220194489.v4 (12/3/04)
CIE-1452934v8

Client#: 2541

PRMREGRI

ACORD - CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 01/07/04
PROGRAM Thibman & Filippini, LLC One East Wacker Drive Suite 1800 Chicago, IL 60601-1802	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
Sample Certificate	INSURERS AFFORDING COVERAGE	NAIC #
	INSURER A: Insurance Company A	
	INSURER B: Insurance Company B	
	INSURER C: Insurance Company C	
	INSURER D:	
	INSURER E:	

CLASS	TYPE OF COVERAGE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> DAY <input type="checkbox"/> LOC	GL123456	01/01/04	01/01/06	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PERSONAL PROPERTY \$50,000 MED EXP (any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> MIXED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	AUTO123456	01/01/04	01/01/06	COMBINED SINGLE LIMIT (SA vehicles) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ ACC \$
B	PROFESSIONAL LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10000	PL123456	01/01/04	01/01/06	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000
C	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY EMPLOYER OR PARTNER/EXECUTIVE OFFICER/BOARDER EXCLUDED? If yes, describe under SPECIAL COVERAGE below OTHER	WC123456	01/01/04	01/01/06	<input checked="" type="checkbox"/> UNEMPLOYMENT BENEFITS <input type="checkbox"/> MEDICAL BENEFITS \$1,000,000 \$1,000,000 \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS AGREE BY EMPLOYER / SPECIAL PROVISIONS
 The following are included as Additional Insured(s) with respect to the General and Excess Liability:
 This insurance is considered primary insurance and any other insurance maintained by the additional insured(s) shall be excess only and not contribute with this insurance.
 A waiver of subrogation applies in favor of the specified entities.

CERTIFICATE HOLDER 330 N. Wabash, LLC 330 N. Wabash Avenue Suite 2601 Chicago, IL 60611	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER SHALL BE RESPONSIBLE FOR... AUTHORIZED REPRESENTATIVE <i>Thomas W. Filippini</i>
---	--

Attachment to the preceding certificate of insurance issued on ___/___/___ to Prime Group Realty L.P. for tenancy / work performed by: _____ (insured)

CERTIFICATE OF INSURANCE EXHIBIT

Property Location: IBM Plaza
330 N. Wabash
Chicago, IL 60611

The following entities are Named Insureds, Loss Payees and Additional Insureds as described below:

- Prime Group Realty Trust and its affiliates
- Prime Group Realty, L.P., and its Partners and affiliates
- Prime Group Realty Services, Inc. and affiliates
- Prime Realty Services, Inc.
- 330 N. Wabash Avenue, L.L.C.
- 330 N. Wabash Mezzanine, L.L.C.
- 77 West Wacker Limited Partnership

Any and all Mortgagees and Land Trusts relating to this property from time to time

The foregoing are Named Insureds and Loss Payees as their interest may appear for Property Coverage.

The foregoing are provided additional insured status under the General Liability and Excess Liability Insurance Policies referenced on the preceding Certificate of Insurance via the following:

Additional Insured - Owners, Contractors, or Lessees (Form B) using ISO Endorsement CG 20 10 11 85 or its equivalent.

This endorsement shall cover premises/operations and products/completed operations for the above captioned tenancy/job and any other subsequent purchase or change orders. Furthermore, Contractual Liability coverage, which provides coverage for the indemnification agreement contained in the contract documents, is contained in the General Liability policy referenced on the preceding Certificate of Insurance.

The coverage afforded the additional insured via the endorsement specified above is primary and non-contributory with any other insurance available to the additional insureds.

A PER PROJECT / PER LOCATION AGGREGATE APPLIES TO THE GENERAL LIABILITY POLICY.

A Waiver of Subrogation in favor of Prime Group Realty, L.P. and all other parties listed above, has been attached to the Workers Compensation policy referenced on the preceding Certificate of Insurance.

General Exhibit (330 N. Wabash, IBM Plaza)

Authorized Representative Signature

3/22/04 Donald Trump 715-7220
(w Eric Dash)

- The casinos are a "very small part of my company in terms of the overall company." Are about 3% of his overall wealth. When he took casinos public he put \$1.8B of debt on and took out \$300M in equity and "I bought half of Manhattan."

- "I told people I was going to put a lot of leverage on the company and take it public. And I did it and I bought 1/2 of Manhattan. Now I want to deleverage the company."

- Debt comes due in little more than two years. Wants to put \$400M into now. Why now? Sooner better. Overleveraged. "It's making cash flow and it's making its interest payments."

REDACTED

Most of the \$ goes toward debt payments and can't spend.

New competition - AC is also
an issue. Plutty. Suber casinos.

↳ Playa & Jay debt (not Marina
debt) is only debt coming due and not
for 2 years.

↳ "I think everybody is really
impressed with the transaction" (re
DLJ/CSFB facility).

- '90 was a real estate and bank
depression. High i-rates. financing
mix of bank debt and junk bonds.

- "The primary difference that you
see in terms of ~~junk bond~~ thing
is a real estate depression the
likes of which you've never seen.
Today the real estate market is
hotter than ever."

↳ i-rates are so low that
everyone is paying Manhattan
lodging.

- "The bond holders would do this:

"because they want to see the company do well so their funds will do well."

↳ "I am sensing no friction, whatsoever w/ the bondholders."

- Pre-packaged BK? "That has nothing to do w/ me. This has to do w/ a company in which I am a major shareholder."

↳ "The company is not liable for the bonds." The company does not guarantee the bonds.

↳ "The bondholders would like to see a transaction done... and maybe or not, maybe going to court." Battle between ~~us~~ and bondholders would be "fruitful"

↳ "Were talking @ a project that takes years." and would "ruin the business." → "I don't think"

anybody would want that
to happen."

- 1 set of bonds matures - 2
years (Taj & Playa) another set - 8
years (Marina & India casino).

↳ "Essentially, folks, they would be
paying into the company."

- Has > 20% of the casino co. after
restructuring.

- "Atlantic City has been a great
place for me."

↳ "I'm selling a piece of
the company."

↳ "I've always loved Atlantic
City."

"The reason that I'm doing it is
that it's good for the company and
it's good for the bondholders."

- Junking is good. i-rates are
low. "Here is one of the best
interest rate environments in the
history of this country." Don't know

where the market will be in 2 years. OR: bondholders have nothing to say over 2 years. no missed interest payments. Casino only show ↑ loss because of depreciation.

** → he uses press no problems w/ making interest payments

- Is he project real estate developer in NYC? Says Bagli is a "scum" and didn't include WYards in his calculation.

- Re "How to Get Rich": what's its purpose? "I think it's a book where people can learn, if they want to learn, about business."

- "I really see my future - despite the fact that my ratings are through the roof - that my future is real estate."
↳ "It's been a bit"

of money "isn't as much \$ as real estate."

- "In primetime television, I'm the highest paid person."

↳ > than Oprah? "Oprah's not prime time."

> than Harry King? "Yeah, and Harry King is cable."

> than the "Friends" cast? Collectively, no; but individually yes.

- What does he own 100% of?

- 100% of 40 Wall St. and "100% of many things" but won't list them.

- "Huge owner, the owner" of WSYards. "If you ask me if it's around 50%, I would say yes."

- NYC real estate market is "very hot."

- "I do get lots of credit for

marketing successfully and I don't think that's anything you should be ashamed of."

↳ "I build great buildings."

- "I think the name has helped the casino in terms of the drawing of the crowds." His name is good for AC casinos.

- "If I put my name on something it means people know I'm building a really terrific building in a really terrific location."

- Bottled water. "Trump Ice" is sold in grocery stores (Anitedes).

↳ Scott's family owns Fresca restaurant and it's sold there.

- "It's not going to be my biggest business." Why water?

"People want to buy Trump and I thought it would be good." Originally was going to only sell at his golf clubs. Did episode of Apprentice and contestants had to sell it.

↳ "Sure that episode's been on were selling 1000s of cases of water."

- Apprentice at Taj airs this week. They have to hold a concert of AC and other "casino-related tasks."

↳ "It will really highlight what a good place it is."

- What book should his shareholders read? Smokes, no answer.

- Casino are less than 3% of his total net worth. @ 2%. \$45 > \$5B "easily" attribute to

someone close to the Trump Org.
Hot real estate market means
his wealth is ↑.

↳ pops will start when
i-rates ↑. low rates through
election

- Very proud of "Out of the Deal."

↳ "It was a big, big
seller."

↳ should bondholders read
AOD or HTGR? "D.O. rather read
my current book because it's
more attuned to
what's happening - the
world today."

↳ "A bondholder would read
HTGR and say: 'You know
what? This is a good time
to make a deal.'"

3/26/04 DJT

- THCR → should 100%
then to 25%, then back
up to 49%; will have 25%
after restructure.

- THCR is @ 3% of net
worth. "It's not a big
company for me but I like
it."

- He sold Playa Hotel. WS Yards:
we owned 100% after zoning
REDACTED He sold
50% to Chinese partners. They
financed it. They have 50% of
the land and units, each of
them. He built and manages
it.

Re '90s sell off: "It's
not bad to sell things. I owned
them and I sold them. That's why
the banks like me. They love

my reputation. "

million in debt for about \$500,000 in cash, \$48 million in new notes, and \$15.7 million in the reorganized company's stock.

Trump Hotels recently reported a second-quarter loss of \$17.6 million, or 59 cents a share, compared with a loss of \$10 million, or 46 cents a share, in the period a year earlier -- one yardstick of just how badly the company has been performing. Moreover, Trump Hotels' cash reserves are shrinking. The company said in its quarterly filing that it has \$81.1 million on hand, down from \$124.3 million in the first quarter of the year. The company had \$106 million in cash on hand at the end of the second quarter last year.

In an interview last night, Scott C. Butera, executive vice president of Trump Hotels, declined to say exactly when a reorganization agreement was reached with bondholders but said that disclosure of the agreement was made in a timely fashion consistent with regulatory requirements.

May 6, 2004, Thursday Late Edition - Final
Section C Page 1 Column 4 Desk: Business/Financial Desk Length:
898 words

Market Place; Trump Hotels Digs Deep for Cash To Try to Prop a Teetering House

By TIMOTHY L. O'BRIEN and ERIC DASH

Veteran gamblers know better than to bet against the house. But what if the house is owned by Donald J. Trump, whose cash-starved casino holdings are struggling to stay afloat?

Mr. Trump is essentially placing a high-stakes bet that his casinos will generate enough cash over the next few weeks to make a \$73.1 million debt payment that is due at the end of the month. It will be a tight squeeze, even for someone with the feline financial dexterity of Mr. Trump. Bankruptcy looms.

Buried at the bottom of the unaudited first-quarter earnings report that Trump Hotels and Casino Resorts released last Friday was a sobering figure: \$91.4 million, the amount of cash that two of Mr. Trump's Atlantic City casinos can tap to help meet the debt payment.

Though that cash trove exceeds the debt payment, it is not unencumbered. New Jersey gambling regulators require casinos to keep a reserve known as "cage cash" to cover unexpected payouts to winning bettors and to provide a cushion for tax payments and payroll. The cage cash reserve at the Trump Taj Mahal and Trump Plaza, the casinos responsible for this month's debt payment, is

about \$50 million -- meaning that only \$41.4 million of the casinos' cash can be applied to the \$73.1 million tab.

The rest of the debt will have to be paid out of the two casinos' fresh cash flow, which averaged about \$12 million a month in the first quarter. Before the Borgata casino opened in Atlantic City last year and began eating into the market share of Trump Hotels and Casinos, the two casinos had free cash flow of about \$18 million a month from April through June.

That suggests that if the Trump casinos somehow manage to ante up all their available cash, fork over the entirety of April and May's cash flow, and dodge other unforeseen expenses for the rest of the month -- they will have \$65 million to \$77 million on hand in a few weeks to pay a \$73.1 million obligation. It is enough to make even reckless gamblers queasy.

Trump Hotels reported its earnings on Friday evening, an hour after the stock market closed and when most of Wall Street was already on its way home for the weekend. While the company's filing crept in like the fog on little cat feet, its finances are hardly elusive. Mr. Trump's company reported a first-quarter loss of nearly \$49 million, about twice its loss a year earlier. Trump Hotels has sputtered along so weakly that it has been unable to spend money on upgrading to fend off the Borgata's advance (though, as the company's proxy filing on Friday showed, Mr. Trump still managed to receive a \$1.5 million salary last year).

Of course, one way out of this mess is to find a friendly outsider with deep pockets. Mr. Trump is contemplating just that. He says he is willing to cede control of the company and his job as chief executive to secure a \$400 million cash infusion from an investment bank, an arrangement that would be subject to the approval of the company's wary and battered bondholders.

A spokeswoman for the New Jersey Division of Gaming Enforcement, which regulates the state's casinos, monitors their finances and sets cage-cash guidelines, said that the agency believed that Trump Hotels was "financially stable."

Andrew M. Susser, an analyst at Banc of America Securities, said he expected the company to make the debt payment, but that it would need to draw upon April and May revenue to do so. "Liquidity is certainly tight around coupon time," he said.

Mr. Trump has another Atlantic City casino, the Trump Marina, as well as small

casino operations elsewhere that he might consider as possible lenders, but those casinos are already saddled with debt. Moreover, bond covenants and gambling regulations hinder the casinos' ability to share their funds.

Trump Hotels was supposed to make its debt payment on May 1, but it invoked a 30-day grace period. Barbara Cappaert, an analyst at KDP Investment Advisors, cautioned that the delay might reflect Mr. Trump's high-stakes negotiating tactics as much as the company's current financial hardships.

"By withholding it, it shows immediately that they need to restructure and it is a carrot for bondholders," she said. "The implicit threat is that if they don't come to an agreement, the company would dissolve."

Even if Trump Hotels has the cash to make its payment this month, it faces other coupon payments this fall and thereafter. Marvin Roffman, an analyst and longtime critic of Mr. Trump who predicted the Trump Taj Mahal's 1991 bankruptcy, is once again gloomy about Mr. Trump's prospects.

"He continues to see erosion in market share, his working capital is gone and the interest rate meter is starting to tick up," Mr. Roffman said. "He is caught between a rock and a hard place. Now, he knows how his 'Apprentices' feel."

Images: Photo: Trump Hotels will tap the cash reserve at the Trump Taj Mahal, above, to help meet a large debt payment due this month on it and another Atlantic City casino. (Photo by Bloomberg News)

May 1, 2004, Saturday Late Edition - Final
Section C Page 2 Column 1 Desk: Business/Financial Desk Length:
800 words

Trump Hotels Reports Loss of \$49 Million for First Quarter

By TIMOTHY L. O'BRIEN and ERIC DASH

Trump Hotels and Casino Resorts, the centerpiece of Donald J. Trump's struggling casino empire, reported a quarterly loss of nearly \$49 million yesterday, further undermining the company's tenuous financial position and complicating its ability to meet hefty debt payments due at the end of this month and in the fall.

Trump Hotels has about \$1.8 billion in debt that has drained the company of the cash it needs to maintain its properties and compete effectively in the Atlantic City gambling market. Over the last few months, the company and its

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(212) 909-6000

Attorneys for Defendants

DONALD J. TRUMP, Plaintiff, v. TIMOTHY L. O'BRIEN, TIME WARNER BOOK GROUP INC., and WARNER BOOKS INC., Defendants.
--

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

DOCKET NO. CAM-L-545-06

CIVIL ACTION

DEFENDANTS' FIRST SET OF
INTERROGATORIES

Pursuant to R. 4:17, Defendants Timothy L. O'Brien, Time Warner Book Group Inc., and Warner Books Inc. (collectively, "Defendants"), by and through their undersigned attorneys and in accordance with the New Jersey Court Rules and the definitions and instructions below, hereby propound this First Set of Interrogatories. Defendants request that Plaintiff Donald J. Trump answer the following Interrogatories within sixty (60) days of service. Such answers shall be served at the offices of

Defendants' counsel, Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022, or at such other location agreed by the parties.

DEFINITIONS

1. "Plaintiff," "you," or "your" shall mean Donald J. Trump.
2. "O'Brien" shall mean Timothy L. O'Brien.
3. "Complaint" means the Complaint and Jury Demand in the instant lawsuit, Docket No. CAM-L-545-06, served on February 8, 2006.
4. "Book" shall mean *TrumpNation: The Art of Being the Donald*, written by O'Brien and published in October 2005.
5. "Properties" shall mean all properties and assets, tangible or intangible, directly or indirectly controlled, owned, or otherwise possessed, in whole or in part, by you or a Trump-related entity (as defined below), or bearing upon your net worth, or otherwise relating to this lawsuit, including but not limited to all properties and assets relating to:
 - a. the "real estate holdings," "residential, commercial, casino and golf course properties," "business ventures in the entertainment, publishing, apparel, cosmetic, consumer and educational fields," "cash and personal investments," "Trump's brand name," "numerous extraordinary properties in New York and around the country," "entertainment businesses," and "various real estate

- ventures," which are referred to in paragraphs 3, 23, and 28 of the Complaint;
- b. "Trump Place," which is referred to in paragraph 21 of the Complaint;
- c. "Trump International Hotel and Tower/Chicago," "Trump International Hotel and Tower/Las Vegas," "Atlantic City casinos," "Trump National Golf Club and Residences/Los Angeles," "Trump World Tower," "Trump Park Avenue," "The Mansion in Palm Beach," "Trump National Golf Club in Bedminster, New Jersey," and "Trump National Golf Club and residences in Westchester, New York," which are referred to in paragraph 28 of the Complaint;
- d. "*The Apprentice*," "*Trumped: The Radio Program*," and the "Miss Universe and Miss USA Pageants," which are referred to in paragraph 23 of the Complaint; and
- e. the properties listed on page 155 of the Book, including but not limited to: (i) 40 Wall Street; (ii) Trump Tower; (iii) Chicago skyscraper; (iv) golf courses; (v) West Side Yards; (vi) "Other Land"; (vii) "Condo inventory"; (viii) Shopping centers; and (ix) Palm Beach real estate.
6. "Trump-related entities" shall mean all corporations, organizations (including but not limited to the Trump Organization), joint ventures, partnerships,

limited partnerships, limited liability companies, real estate investment trusts, investment vehicles or other entities in which you directly or indirectly own or control—or, in the past, directly or indirectly owned or controlled—any interest, in whole or in part, and all affiliates of those entities, including but not limited to entities or affiliates relating to the Properties.

7. “Document” is used in the broadest sense and, as used herein, shall be understood to mean: (a) any written or graphic matter of any kind or character, however produced or reproduced; (b) any electronically or magnetically recorded or stored matter of any kind or character, however produced or reproduced; and (c) any other matter of any kind or character constituting the recording of any tangible information or thing, or stored in any retrievable way, by any means of communication or representation or data retention. “Document(s)” refers to all materials on the subject matter of the request, whether originated or received by you and whether internal or otherwise, and shall be deemed to refer to all originals, unidentical copies, and drafts (including any preliminary or unexecuted drafts, including those marked to show as revisions of earlier drafts) of any writing, record, or paper of any type or description, however produced or reproduced, whether handwritten, typewritten, printed, dictated, photocopied, photographed, or recorded by any other means, however produced, now or formerly, in the actual or constructive possession, custody, or control of you or of which you have any knowledge. “Document(s)” includes, but is not limited to, any and all correspondence, papers, records, tables, charts, analyses, evaluations, graphs, schedules, reports, memoranda, notes, notations, work papers, scrapbooks, lists, calendar entries, diary entries, letters

(sent or received), appointment books, desk calendars, affidavits, statements, tabulations, summaries, opinions, telegrams, telexes, cables, messages (including but not limited to reports or recordings of telephone conversations or conferences), other records of personal conversations, conferences or interviews, studies, books, periodicals, magazines, booklets, circulars, bulletins, instructions, files, transcripts, minutes, records of inter- and intra-office communications, records of any other type of communications, questionnaires, contracts, agreements, assignments, licenses, ledgers, journals, statistical records, books of account, financial statements, orders, invoices, statements, bills, checks, vouchers, notebooks, receipts, acknowledgments, drawings, plans, manuals, descriptions, printed matter of any form, manuscripts, articles, publications, data processing cards, computer generated matter or printouts, photographs, photographic negatives, phonograph records, tape recordings, wire recordings, sound or video recordings, floppy disks, hard disks, CD disks, CD-ROM disks, WORM disks, ROM chips, flash memory chips, permanent RAM chips, data processing input and output, microfilm, microfiche, any mechanical recordings, transcripts or logs of any such recordings, all other data compilations from which information can be obtained or translated if necessary, all other records kept by electronic, photographic, or mechanical means, and any other retrievable intelligence, however recorded, memorialized, or preserved. If a document has been prepared in several copies, or additional copies have been made, or copies are not identical (or, by reason of subsequent modification of a copy by the addition of notations or other modifications, are no longer identical) each non-identical copy is a separate document.

8. "Communications" means every contact or statement of any nature, whether oral or written, from one person to another, whether in the form of facts, ideas, inquiries, or otherwise, and any evidence of such contact, including without limitation any correspondence, memoranda, notes, diaries, daily calendars, electronic mail messages, voicemail messages, "instant messages," text messages, computer files, electronic or magnetic media, or other documents or materials concerning or relating to such contact.

9. "Person" shall mean any natural person, group of natural persons acting as individuals, group of persons acting in a collegial capacity (e.g., as a committee, board of directors, etc.), trust, corporation, partnership, limited partnership, joint venture, limited liability company, government or governmental agency, any other incorporated or unincorporated business, government, or entity, as well as any "person" acting by or through, directly or indirectly, any other "person" as well as any "person" by whom such "person" was controlled.

10. "Date" shall mean the exact day, month, and year, if ascertainable, or, if not, the best available approximation, including an event's temporal relationship to other events.

11. The word "any" shall be construed as the totality of all, any, each, and every, and the word "all" shall be construed as the totality of all, any, each, and every.

12. When referring to a natural person, the use of "identify" or "identity of" shall mean to set forth: (a) his or her name; (b) his or her business position and affiliation; and (c) if he or she is not currently employed by you, his or her last known business and

home addresses, including telephone numbers. If any of this information is unavailable, provide other available means of identifying such person. Once a person has been fully identified in your answer, such person may be identified thereafter by name alone.

13. When referring to any entity other than a natural person, the use of "identify" or "identity of" shall mean to set forth: (a) its name and principal business address; (b) the nature of its business; and (c) the name and position of the individual purporting to act or speak for it or on its behalf. If any of this information is unavailable, provide other available means of identifying such entity. Once an entity has been fully identified in your answer, such person may be identified thereafter by name alone.

14. When referring to documents, the use of "identify" shall mean to set forth: (a) the type of document (e.g., letter); (b) its date; (c) authors; (d) recipients; (e) title, if any; and (f) subject matter. If a document is no longer in your possession, custody, or control, so state, identify the document to the best of your knowledge and state what disposition was made of it, when, and by whom.

15. When referring to communications, if the communication was in the form of a document, the use of "identify" shall mean to set forth (as defined above) the document and specific language that constitutes the communication; and, if the communication was oral or otherwise not in the form of a document, "identify" shall mean to set forth: (a) the time, date, and place of such communication; (b) whether it was in person or by some other means; (c) each person who was present at or who participated in such communication; (d) the words of such communication; and (e) each document replicating or summarizing such communication.

16. "Relating to" shall mean referring to, discussing, reflecting, dealing with, analyzing, evaluating, estimating, constituting, concerning, describing, evidencing, or pertaining to, in any way either directly or indirectly, and either in whole or in part.

INSTRUCTIONS

1. These Interrogatories are directed to you and cover all information in your possession, custody, and control, including information in the possession of your employees, agents, employees, affiliates, attorneys, accountants, representatives, financial or business advisors, or other persons directly or indirectly employed or retained by you, or anyone else acting on your behalf or otherwise subject to your control.

2. Each Interrogatory shall be construed as being inclusive rather than exclusive, bringing within the scope of the Interrogatory all responses that otherwise might be construed to be outside of its scope. Thus, unless the content of the Interrogatory specifically states otherwise, references to the singular include the plural, and vice versa; references to one gender include the other gender; references to the present tense include the past; and disjunctive terms or phrases should be read to include the conjunctive and vice versa.

3. In accordance with R. 4:17-7, these Interrogatories are continuing in nature. You are obliged to change, supplement, and correct all answers to Interrogatories and responses to the production request to conform to available information, including such information as first becomes available to you after the answers and production of documents hereto are filed and made, should additional information become known or

should information supplied in the answers or documents prove to be incorrect or incomplete.

4. The answers to Interrogatories provided should first restate the questions asked and also identify the person(s) supplying the information. The person supplying the information shall certify to all such responses.

5. In answering these Interrogatories, furnish all information that is available to you or may be reasonably ascertained by you, including information in the possession of any or your agents or attorneys, or otherwise subject to your knowledge, possession, custody, or control.

6. When Interrogatories contain separately numbered or lettered paragraphs, each separately numbered or lettered paragraph should be treated separately and a separate response furnished.

7. Each Interrogatory shall be construed independently and not with reference to any other Interrogatory for the purpose of limitation and shall be construed as being inclusive rather than exclusive. Questions regarding the interpretation of these Interrogatories should be resolved in favor of the broadest possible construction.

8. In answering these Interrogatories, if you encounter any ambiguity in construing either the Interrogatory or a definition or instruction relevant to the inquiry contained within the Interrogatory, set forth the matter deemed ambiguous, and set forth the construction chosen or used in answering the Interrogatory.

9. If you object to any part of an Interrogatory, answer all parts of such Interrogatories to which you do not object, and, as to each part to which you object, separately set forth the specific basis for the objection.

10. If you claim any form of privilege or other protection from disclosure as a ground for withholding information contained in a non-written communication that is responsive to an Interrogatory, or any part thereof, state the following with respect to the non-written communication: (a) the date thereof; (b) the identity of each of the participants in the non-written communication; (c) the identity of each person present during all or any part of the non-written communication; (d) a description of the non-written communication sufficient to identify the particular communication without revealing the information for which a privilege or protection from non-disclosure is claimed; (e) the nature of your claim of non-discoverability (e.g., attorney-client privilege); and (f) each and every fact on which you rest your claim of privilege or other protection from disclosure, stated with sufficient specificity to permit Defendants to make a full determination as to whether your claim is valid.

11. If you claim any form of privilege or other protection from disclosure as a ground for withholding information contained in a document that is responsive to an Interrogatory, or any part thereof, set forth with respect to the document: (a) the date and number of pages; (b) the identity of the author(s) or preparer(s); (c) the identity of the addressee, if any; (d) the title of the document; (e) the type of document or other tangible thing (e.g., letter, memorandum, telegram, chart, report, recording disc); (f) the subject matter (without revealing the information as to which privilege or protection from non-

disclosure is claimed); (g) the identity of each person who has received the document or to whom knowledge of the contents of the document was communicated; (h) the identity of the present custodian(s); (i) the nature of your claim of non-discoverability (e.g., attorney-client privilege); and (j) each and every fact on which you rest your claim of privilege or other protection from disclosure, stated with sufficient specificity to permit Defendants to make a full determination as to whether your claim is valid.

12. If you claim any form of privilege or other protection from disclosure, other than as set forth in Instructions 10 and 11, as a ground for not answering any Interrogatory or any part thereof, set forth: (a) the nature of your claim as to non-discoverability; and (b) each and every fact on which you rest your claim or privilege or other protection from disclosure, stating such facts with sufficient specificity to permit Defendants to make a full determination as to whether your claim is valid.

13. If you know of any responsive document, communication, or information, but cannot give the specific information or the full information called for by a particular Interrogatory, so state and give the best information you have on the subject, and identify every person you believe to have the required information.

14. If you answer any Interrogatory by reference to records from which the answer may be derived or ascertained, you shall identify such records in sufficient detail to permit the interrogating party to locate and identify the records and to ascertain the answer as readily as you could, including but not limited to by Bates number or file path.

15. All documents, including electronically stored documents, shall be produced in their native format.

16. Please attach written material to any answer for which written material is requested and/or available. If such written material is not available, state where it may be obtained. Label the written material with the number of the Interrogatory to which it pertains.

17. To the extent you contend that you lack of sufficient information to respond fully to any Interrogatory, you shall: (a) respond to the extent able; (b) describe the information preventing a fuller response; and (c) explain why you are unable to obtain that information.

18. If you object to any Interrogatory on the grounds that the information sought is not available in the manner requested, provide data and/or information from which the information could be derived or obtained in the manner sought.

19. On each Interrogatory response, list the name and title of the person or persons who prepared the response or who is responsible for the information contained therein.

20. Unless a request specifically states otherwise, the information sought in these Interrogatories covers the time period of January 1, 2000 to February 8, 2006.

21. These Interrogatories are submitted for the purpose of discovery and are not to be taken as waiving any obligation to introduce at trial evidence on subjects covered by these Interrogatories or an admission of the admissibility at trial of any evidence pertaining to any of the matters covered by these Interrogatories.

INTERROGATORIES

1. Identify each communication that you allege to have been defamatory, including but not limited to the specific words alleged to have been defamatory.

Answer:

2. Set forth your net worth within \$50 million, or as precisely as possible, as of each of the following dates: (a) August 1, 2004; (b) March 5, 2005; (c) April 21, 2005; (d) April 25, 2005; (e) October 26, 2005; and (f) as of the date of your response to these Interrogatories. For each of these dates, set forth how you calculated or arrived at the net worth you set forth. If you are unable for any of these dates to set forth your net worth within \$50 million, explain why you cannot.

Answer:

3. As of the first day of each year from 2000 to 2005, and also as of April 21, 2005 and October 26, 2005: (a) identify each of your assets and liabilities; (b) specify the value that you assigned to each asset and liability at the relevant times as well as any alternative valuations and responses thereto; (c) explain the basis for the value that you specified for each asset and liability; (d) explain the terms of your ownership interest in

each asset as well as the terms of your obligations regarding each liability; and (e) identify and attach all documents relevant thereto.

Answer:

4. Set forth the complete factual basis for the claim contained in paragraph 3 of the Complaint that “the value of Trump’s brand name alone is huge, amounting in itself to hundreds of millions, if not billions, of dollars of value,” specify any alternative valuations and responses thereto, and identify and attach all documents relevant thereto, including but not limited to any financial statements (audited, unaudited, or compilations) or other documents that assign a particular value to the Trump brand name.

Answer:

5. Set forth the complete factual basis for the allegation contained in paragraph 6 of the Complaint that O’Brien referred to Trump as a “financial pornograph[er],” and identify and attach all documents relevant thereto.

Answer:

6. Set forth the complete factual basis for the allegation contained in paragraph 6 of the Complaint that "O'Brien knew that the statements in his book about Trump's net worth were false—and subsequently admitted on at least two occasions that those statements were erroneous and that Trump was worth considerably more than \$150 million to \$250 million," and identify and attach all documents relevant thereto. For each of these two alleged occasions, set forth: (a) the exact words, if known, and, if not known, the substance of it; (b) the date it was made; (c) all persons present when it was made (if oral); (d) all persons to whom it was made or provided (if written); (e) the place where it was made; (f) the method of its communication; and (g) all persons, to your knowledge, with whom it was discussed.

Answer:

7. Set forth the complete factual basis for the allegation contained in paragraph 7 of the Complaint that "Warner also knew that O'Brien's statements about Trump's net worth were false and knew or should have known that O'Brien was an unreliable and irresponsible reporter who had a history of using his position to pursue malicious personal vendettas against the subject of his reporting," and identify and attach all documents relevant thereto.

Answer:

8. Set forth the complete factual basis for the allegations contained in paragraph 21 of the Complaint that O'Brien: (a) "scarcely glanced at any of the thousands of pages of documents made available to him" on April 21, 2005; and (b) instead spent "most of the time . . . inappropriately [trying] to pressure [Michelle] Scarbrough to go on a date with him." Identify and attach all documents relevant thereto.

Answer:

9. Set forth the complete factual basis for the allegations contained in paragraph 22 of the Complaint that "O'Brien continued to harass Ms. Scarbrough" and that he "admitted [to her] that Trump's ownership of Trump Place . . . was by itself worth more than \$500 million," and identify and attach all documents relevant thereto.

Answer:

10. Identify all communications between Michelle Scarbrough and any individuals relating to O'Brien or any of the other Defendants, and identify and attach all relevant documents thereto.

Answer:

11. Set forth the facts and circumstances surrounding the June 2005 sale of Trump Place and/or the "West Side Project" as referenced in paragraph 26 of the Complaint, including but not limited to information on any payments or funds due to you as a result of the sale, and identify and attach all documents relevant thereto.

Answer:

12. Set forth the complete factual basis for the claim contained in paragraph 28 of the Complaint that, "prior to the publication of the book, Trump had invested approximately \$380 million in cash . . . in various real estate ventures," including but not limited to the following information for each investment: (a) the identity of the real estate venture; (b) the identity of the investor (e.g., you or a specific Trump-related entity); (c) structure (e.g., LLC, LLP, or Inc.); (d) amount invested; (e) specific source of funds; (f) accounts from which funds were withdrawn; (g) any related loans or other indebtedness

or liability for which you or any Trump-related entity were liable, potentially liable, or guaranteed; and (h) the identity of any other parties to the transaction. Identify and attach all documents relevant thereto.

Answer:

13. Set forth the complete factual basis for the claim contained in paragraph 28 of the Complaint that, at the time of the book's publication, you maintained "approximately \$117 million in cash," including but not limited to the accounts in which such funds resided and whether such funds were in anyway encumbered or pledged, and identify and attach all documents relevant thereto.

Answer:

14. Set forth the complete factual basis for the allegation contained in paragraph 32 of the Complaint that O'Brien made "false statements about Trump's relationship with his children," and identify and attach all documents relevant thereto.

Answer:

15. Identify any individual known to you or any of your agents who approached O'Brien at the Coliseum Books event referenced in paragraph 32 of the Complaint. State the substance of what the individual said to O'Brien.

Answer:

16. Set forth the complete factual basis for the allegation contained in paragraph 33 of the Complaint that O'Brien has a "history of anti-Trump reporting," and identify and attach all documents relevant thereto.

Answer:

17. Set forth the complete factual basis for the allegation contained in paragraph 36 of the Complaint that: (a) O'Brien "resorted to unprofessional and unethical tactics, including physical and verbal harassment, to intimidate sources into providing information"; and (b) "Trump received complaints from business associates, employees and former employees that O'Brien was using harassment and threats to try to pressure them into making false, defamatory and misleading statements about Trump." Identify all individuals that O'Brien allegedly harassed, intimidated, or threatened, as well as

those individuals reporting such allegations. In addition, identify and attach all documents relevant thereto.

Answer:

18. Set forth the complete factual basis for the allegations contained in paragraph 37 of the Complaint (upon information and belief) that: (a) "various persons have filed complaints with the New York City Police Department after being stalked and threatened by O'Brien"; (b) "O'Brien has threatened sources by telling them he can 'settle scores' with enemies by writing negative articles about them"; (c) "O'Brien has been accused of attempting to use his position as a reporter to obtain dates, or other entanglements, with women"; (d) "O'Brien was terminated by the *Wall Street Journal* for violation of company policy"; (e) "O'Brien has been accused by sources and subjects alike of a volatile, uncontrollable temper"; and (f) "it has been reported that O'Brien has boasted that 'access to the [*New York*] *Times* pages to settle personal scores was a fringe benefit available to *New York Times* reporters.'" Identify and attach all documents relevant thereto, and identify all witnesses with information relating to these allegations.

Answer:

19. Set forth the complete factual basis for the allegation contained in paragraph 38 of the Complaint that Warner "knew of O'Brien's longstanding personal animus toward Trump and O'Brien's Jayson Blair-like proclivity for substituting fiction for fact in his report," and identify and attach all documents relevant thereto.

Answer:

20. To the present, set forth the nature and amount of, and facts and data supporting each and every claim of damages in this action, including a description of: (a) the method used to calculate the total amount of such damages; (b) the source of all facts and data supporting such damages; (c) all persons involved in making such calculations of damages; and (d) all persons with knowledge of such damages or any data used to calculate such damages. Identify and attach hereto copies of all documents on which you relied in calculating such damages.

Answer:

21. To the present, set forth the details of any deals that you believe were prevented or interfered with because of the allegedly defamatory statements referenced in your Complaint, including but not limited to transactions, purchases, sales, transfer of

real or other assets, or other arrangements. Specify the nature and basis for your belief, and identify and attach all documents relevant thereto.

Answer:

22. Identify any accountants or accounting firms, attorneys or law firms, or other financial or legal professionals that you or any Trump-related entity have retained in the past five years.

Answer:

23. Identify any financial institution, any labor union or entity related to or affiliated with a labor union, or any other person or entity from whom or which you or any Trump-related entity has received or to whom or which you or any Trump-related entity has extended loans, officer loans, advances, lines of credit, letters of credit, debt financing, or any other type of extension of credit. Set forth the details relating to each such instance, including but not limited to: (a) total amount received or extended; (b) terms and conditions, including applicable interest rate and repayment period; (c) whether secured or unsecured; (d) collateral, if any; and (e) current amount outstanding, if any. Identify and attach all documents relevant thereto.

Answer:

24. For the period of January 1, 1990 to February 8, 2006, identify any family member, family trust, or estate of a deceased family member, from whom or which you or any Trump-related entity has received or to whom you or any Trump-related entity has extended loans, officer loans, advances, lines of credit, letters of credit, debt financing, or any other type of extension of credit. Set forth the details relating to each such instance, including but not limited to: (a) total amount received or extended; (b) terms and conditions, including applicable interest rate and repayment period; (c) whether secured or unsecured; (d) collateral, if any; and (e) current amount outstanding, if any. Identify and attach all documents relevant thereto.

Answer:

25. Set forth the details relating to any real estate transactions – not already detailed in your answer to Interrogatory 12 – in which you or any Trump-related entity participated, including but not limited to the following information for each transaction: (a) the identity of the real estate; (b) the identity of the investor (e.g., you or a specific Trump-related entity); (c) structure (e.g., LLC, LLP, or Inc.); (d) amount invested; (e)

specific source of funds; (f) accounts from which funds were withdrawn; (g) any related loans or other indebtedness or liability for which you or any Trump-related entity were liable, potentially liable, or guaranteed; and (h) the identity of any other involved parties. Identify and attach all documents relevant thereto.

Answer:

26. If you have been involved in any lawsuit, other than this litigation, set forth for each lawsuit: (a) your role in the case; (b) the nature of the case; (c) your attorneys in the matter; (d) the other parties to the case and their attorneys; (e) the court and docket number; and (f) the disposition of the case.

Answer:

27. Identify all persons with knowledge, information, or documents concerning your net worth (past or present) or any other subject matter of the foregoing interrogatories, and state with particularity for each such person the substance of such knowledge and information as well as how it was acquired.

Answer:

28. Identify every representation made by you or on your behalf regarding your net worth, including any reference to an estimated value or to a general classification of your wealth (e.g., billionaire or millionaire). In addition, identify and attach all documents referencing or supporting each representation.

Answer:

29. For the period of January 1, 2000 to the present, set forth the details relating to all estimates of your net worth of which you are aware, including estimates contrary to your own estimates, and identify the individual or entity making each estimate. In addition, identify and attach all documents relevant thereto.

Answer:

30. For the period of January 1, 2000 to the present, identify all communications in which anyone has questioned you or any of your employees or

representatives, directly or indirectly, and whether in writing, orally, electronically, telephonically, or otherwise, about your net worth or more generally about whether you are a millionaire or billionaire.

Answer:

31. Identify all individuals who created or contributed to the content of the brochure left in guest rooms at Mar-a-Lago, which estimated your net worth at \$9.5 billion (referenced on page 154 of the Book). Set forth the complete factual basis for that estimate, including but not limited to the source(s) of information used in connection with the estimate, and identify and attach all documents relevant thereto.

Answer:

32. Identify every instance relating to your business dealings and those of any Trump-related entity in which you exaggerated or misrepresented the truth. In addition, identify and attach all documents relevant thereto.

Answer:

33. Identify every instance in which someone else claimed, in relation to your business dealings and those of any Trump-related entity, that you exaggerated or misrepresented the truth, including: (a) the identity of the claimant; (b) date; (c) nature of claim; and (d) resolution, if any. In addition, identify and attach all documents relevant thereto.

Answer:

34. Identify every instance in which your accounting books or those of any Trump-related entity did not comply and/or were found not to have complied with Generally Accepted Accounting Principles, and state the reasons therefor.

Answer:

35. Set forth the details relating to every instance from 1975 to the present in which: (a) you or anyone on your behalf (including your attorneys or other

representatives) threatened any individual or entity with a lawsuit claiming defamation (libel or slander) and/or filed such a lawsuit; or (b) you or any Trump-related entity were threatened with or actually were sued for defamation (libel or slander). Identify and attach all documents relevant thereto, including related communications and any pleadings. If a lawsuit was filed, state: (a) the court and docket number; (b) all parties to the lawsuit and their attorneys; and (c) the disposition.

Answer:

36. Set forth the details relating to all contracts to which you or any Trump-related entity has been a party, and which were in effect at any point during the period January 1, 2004 to February 8, 2006 and were worth or involved payments exceeding \$25,000, including: (a) the nature of the contract; (b) date; (c) other parties; and (d) current status of the contract. Identify and attach all documents relevant thereto.

Answer:

37. Set forth the details relating to all speeches, lectures, or other addresses you have made and, if any, the remuneration you received for each, including but not limited to in connection with the Learning Annex. For each, identify and attach all

documents relevant thereto, including: (a) any contract; (b) a text of the address and/or notes used in delivering the address; and (c) any audio, video, or other recordings.

Answer:

38. Identify all communications that you made about O'Brien or the Book, and identify and attach all documents relevant thereto.

Answer:

39. Identify all of your communications, including but not limited to in any of your books, periodicals, articles, letters, blog postings, or public statements, in which you included information gathered from a confidential or unnamed source and did not disclose the source's identity.

Answer:

40. Identify each person you believe to have knowledge regarding the factual allegations set forth in the Complaint.

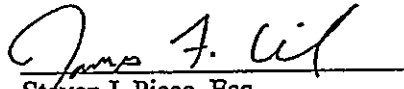
Answer:

41. . Identify each person likely to have discoverable information that you may use to support your claims, identifying the subjects of the information.

Answer:

Dated: August 21, 2006

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CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT

I hereby certify that the answers to Defendants' First Set of Interrogatories are true and correct. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.

Donald J. Trump

DATED: _____, 2006

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CIVIL PART
CAMDEN COUNTY
DOCKET NO. L-545-06

DONALD J. TRUMP,)
)
Plaintiff,) TRANSCRIPT OF
)
vs.) HEARING ON
)
TIMOTHY L. O'BRIEN, et al.,) MOTION TO COMPEL
)
Defendants.)

Place: Superior Court of New Jersey
Camden County Courthouse
101 South 5th Street
Camden, New Jersey 08103-4001

Date: December 20, 2006

BEFORE:

HONORABLE IRVIN J. SNYDER, J.S.C.

TRANSCRIPT REQUESTED BY:

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1 THE COURT: -- on the record under L-545-06.
2 Counsel, your appearance for the record?

3 MR. TAMBUSSI: Your Honor, William M.
4 Tambussi of Brown and Connery, with Mark Ressler of
5 Kasowitz -- Kasowitz, Benson, Torres and Friedman of
6 New York. Mr. Ressler will be arguing the substance --
7 substantive motion on the shield privilege.

8 MR. MELODIA: Good morning, Your Honor. Mark
9 Melodia from Reed Smith for the defendants. And with
10 me is Andrew Ceresney from the Debevoise Firm, who has
11 admitted pro hac vice. And Mr. Ceresney will also be
12 arguing on the substance of the privilege motion and we
13 can decide whether the motions Your Honor wants to hear
14 this morning, in terms of discovery issues and the
15 like.

16 THE COURT: Okay. Gentlemen, you did send me
17 quite a bit of paper and I think you focused on the
18 issues rather well. I don't know how much oral
19 argument really is needed.

20 I think the first thing we should talk about
21 and we have to talk about is the conflict of laws
22 issue. And, again, I've read everything and, quite
23 frankly -- well, it appeared that there is a conflict
24 in the laws. And we all know how strong the shield law
25 in New Jersey, it's an absolutely privilege and it's

1 rather extensive. Whereas New York, on the other hand,
2 during the absolute privilege aspect of the statute, it
3 seems to be somewhat aligned with New Jersey, but a
4 little bit, I think, more liberal as far as allowing
5 for disclosures.

6 But then we have another aspect of New Jersey
7 law that talks about non-confidential sources and we'll
8 be talking a little bit about what is and is not non --
9 confidential or non-confidential, I've had the
10 opportunity to read the entirety of the book a couple
11 times in preparation for the motion.

12 So let's talk about that aspect where we're
13 talking about actual conflict. Is there actual
14 conflict between the laws of the two states? Hear from
15 the plaintiff first.

16 MR. RESSLER: Thank you, Judge.

17 THE COURT: And again, please, don't try --
18 don't rehash what you have in the papers. I -- I see
19 that there's potential conflict in the laws.

20 MR. RESSLER: Judge, I think Your Honor's
21 comment is on the mark. I mean, I think that the New
22 Jersey statute probably is more -- can be interpreted
23 as being more encompassing and more protective with
24 respect to the absolute protection.

25 Our view is that the result is the same under

1 either state's shield law, as well as the fact that we
 2 just applied the restatement of the conflicts of laws,
 3 which applies the most significant relationship test.
 4 And we came out believing that New York actually has
 5 the most significant relationship, if you apply that
 6 test, based on the fact that Trump is domiciled in New
 7 York, which is really the key in the defamation
 8 context, as well as the fact that the defendants do
 9 their business in New York, Trump's -- has a real
 10 estate empire all over the globe, but, you know,
 11 primarily it's in New York, Trump Plaza and Trump World
 12 Tower, etcetera.

13 So we believe that under that most
 14 significant relationship test, New York -- New York
 15 shield law should govern. But again, we view the
 16 result being the same, whether it's New Jersey -- the
 17 New Jersey statute or the New York statute.

18 THE COURT: No, I'm necessarily sure that I
 19 agree with you there, but there are substantial
 20 contacts with New York. But -- but look where we're
 21 sitting. This is pretty far from New York, about 90
 22 miles southwest of New York. He picks the forum, puts
 23 himself in our courts.

24 MR. RESSLER: Right.

25 THE COURT: New Jersey has a substantial

1 governmental interest in the protection of journalists,
 2 in fact, one of the strongest interests in the United
 3 States to protect journalists. So, if that's, in fact,
 4 the interest of New Jersey, how can I possibly accept
 5 New Jersey law and why should accept -- I mean, strike
 6 that -- New Jersey -- New York law. Why should I
 7 accept New York law? Wouldn't that go against the
 8 public policy and the interest of the State of New
 9 Jersey?

10 MR. RESSLER: Judge, I appreciate that.
 11 You're absolutely right, Mr. Trump wanted to be in New
 12 Jersey --

13 THE COURT: Isn't that one of the important
 14 aspects of the conflicts, as set forth in the
 15 Restatement?

16 MR. RESSLER: It is -- I mean, it -- well, in
 17 the restatement, again, we -- we think that the most
 18 significant relationship test is -- is the --

19 THE COURT: O'Brien lives in New Jersey, if
 20 I'm not mistaken.

21 MR. RESSLER: -- is the proper test. He
 22 does, but he --

23 THE COURT: Okay.

24 MR. RESSLER: -- he carries out his business
 25 for the New York Times, as he says in his papers, in

1 New York. So -- and -- and I guess the key point with
2 respect to the defamation context, in terms of the
3 conflict of law is -- is where the plaintiff is harmed,
4 where the injury is sustained. Now, Mr. Trump --

5 THE COURT: Yeah, but -- but -- but you have
6 to understand New York has a dual interest and their
7 statute sets forth a dual interest, the absolute
8 privilege is accorded to protect the interests of the
9 journalist. Non-confidential source balance test, much
10 like we have in the constitutional test, deals with the
11 litigant.

12 So we're looking at the public policy of the
13 two states. New Jersey it's protect the journalist and
14 really doesn't care about who the litigant is. New
15 York has a different view. So we have, on the positive
16 side for the defendants, Mr. Trump selects New Jersey
17 to litigate the case. He has real estate holdings in
18 New Jersey.

19 MR. RESSLER: Absolutely.

20 THE COURT: Mr. O'Brien is a resident of the
21 State of New Jersey, not you -- New York. So how do we
22 overcome those three variables? And the fact, most
23 importantly he picks this as a forum for some
24 unspecified reason. I still don't know what the reason
25 is, it made no sense to me. But hey, listen, it's

1 here. The book was distributed in 50 states plus
2 probably translated into God knows how many languages.
3 He probably could have filed suit in Tokyo.

4 MR. RESSLER: Well, Mr. Trump wanted to file
5 in New Jersey, he has very important business
6 interests, as Your Honor correctly alluded to, in New
7 Jersey, he's got real estate holdings in New Jersey.
8 So there's no question that this is the -- this is the
9 forum he selected, Your Honor is absolutely right, and
10 -- and we want to be here. But, again, we -- we viewed
11 -- and the reason we said in our papers that we believe
12 New York law applies is because of the injuries
13 sustained by Mr. Trump primarily occurs in New York. I
14 mean, that's where he carries on his business, the
15 Trump Organization is based there. It's the media
16 capital of the country.

17 THE COURT: Well, we talked about another
18 aspect of the restatement, where did the tort occur,
19 where did the injury occur. The injury occurred,
20 theoretically, throughout the 50 states. Where did the
21 tort occur? The tort occurs at the time of
22 publication. Which, as we all know from the book, is
23 New York, because it tells me about the third page in.

24 All right. I understand your position. With
25 respect to New York now, when we're -- you can sit down

1 now.
 2 MR. RESSLER: Thanks, Judge.
 3 THE COURT: Talk about New York. I just gave
 4 you the three variables for New Jersey.
 5 MR. CERESNEY: And Your Honor, my usual
 6 approach to these things is when --
 7 THE COURT: -- quickly, I'm telling you,
 8 because you're gonna make a mistake by doing that.
 9 MR. CERESNEY: Yes, exactly. Well, Your
 10 Honor, I mean, when you've made the point so
 11 eloquently, it's hard for me to --
 12 THE COURT: Okay. Well, --
 13 MR. CERESNEY: -- to make it --
 14 THE COURT: -- forget that, take the hip
 15 waders off and start talking to me. Let's talk about
 16 New York for God's sakes. You got --
 17 MR. CERESNEY: Sure.
 18 THE COURT: You got Gotham City, what a
 19 beautiful picture of Donald Trump and all these fine
 20 buildings that I just saw Saturday when I was in the
 21 city. You know, this is a book that primarily deals
 22 with the City of New York. Donald Trump is a resident
 23 of the City of New York, despite the fact that he has
 24 holdings in New Jersey, holdings in Florida and God
 25 knows where else, Chicago as well. We have that.

1 We have a tort that occurs in New York,
 2 publication; alleged tort that occurs in New York,
 3 publication of the book. We have Mr. O'Brien, who has
 4 his entire professional life in New York and his
 5 credibility stems from his relationship and his
 6 acceptance of his relationship with New York. I think
 7 one of the notations I made -- let me just see if I can
 8 find it here.
 9 "It would appear that, although, in New
 10 Jersey's absolute privilege purpose is to protect the
 11 journalist, O'Brien is a New York journalist, his
 12 professional association with the press and the
 13 publications of New York is where he has gained his
 14 professional reputation."
 15 He says it in the back of the book. I mean,
 16 yeah, I love it when we just read the dust covers when
 17 you go in Borders or --
 18 MR. CERESNEY: Sure.
 19 THE COURT: -- Barnes and Noble and you say,
 20 "Oh well, tell me a little bit about this author, I
 21 don't know Tim O'Brien" -- I do, because I read the New
 22 York Times -- but what -- what is it that O'Brien says
 23 he is? He's a staff writer with New York Times, he's
 24 written about leading business personalities, computer
 25 scam, Russia, the art world, Wall Street, terrorism,

1 money, politics and Donald Trump. Prior to joining the
2 Times he was a reporter with the Wall Street Journal.
3 O'Brien has also contributed to other publications,
4 including Talk Magazine, where he was a senior feature
5 writer.

6 MR. CERESNEY: Well --

7 THE COURT: And it talks about he --

8 MR. CERESNEY: Of course, my opinion, Your
9 Honor --

10 THE COURT: He lives outside of TrumpNation.

11 MR. CERESNEY: Outside of TrumpNation.

12 THE COURT: Inferentially, New York.

13 MR. CERESNEY: That's right.

14 THE COURT: And it says also knows New York
15 City. So -- and Talk Magazine, by the way, is a
16 defunct --

17 MR. CERESNEY: It is.

18 THE COURT: -- magazine that was published
19 out of New York.

20 MR. CERESNEY: All -- all true, Your Honor.
21 But all irrelevant to the conflict of laws here.
22 Because what Your Honor put your finger on is the exact
23 issue here, which is, first of all, he brought suit
24 here and the irony, of course, is he's asking to apply
25 a law that states where he could have --

1 THE COURT: But if that --

2 MR. CERESNEY: -- filed it in any --

3 THE COURT: -- was all the -- that was all
4 the gravamen of where we apply the law, everybody would
5 file suit here, we wouldn't have any conflict of laws,
6 we wouldn't have the restatement and we wouldn't have
7 had headaches when we we're all in law school about the
8 issues.

9 MR. CERESNEY: Well, Your Honor, actually
10 there is some support -- and I am gonna get to the
11 restatement on the privilege in a moment -- but there
12 is some support that even if the significant
13 relationship test applies here -- which we would argue
14 it doesn't, because the -- the New Jersey statute;
15 which is, as Your Honor had mentioned, the strongest,
16 one of the strongest in the nation trumps that.

17 But even if it didn't, even if the
18 significant relationship --

19 THE COURT: Pardon the pun?

20 MR. CERESNEY: Exactly. The -- even if the
21 significant relationship test governed, Your Honor, I'd
22 point Your Honor to Sack on Defamation, which talks
23 about:

24 "In several cases courts have refused to
25 apply the law of the plaintiff's domicile, where the

1 plaintiff has sued in another state. The state where
2 the defendant is domiciled or where the defendant's
3 place of business is located and where another state,
4 typically the forum, has a significant relationship to
5 the parties or the issues."

6 Now, that is specifically applicable here.
7 You pointed out that Mr. O'Brien is a resident of New
8 Jersey and, in fact, the book jacket says that. Mr.
9 Trump has extensive business dealings here. As you
10 pointed out, his reputation, according to him, is
11 international and any damage allegedly that occurred
12 here, as you pointed out, could occur throughout the
13 world, in theory. And we would argue obviously no
14 damage occurred here. So, even under that test, we
15 think New Jersey applies.

16 But, Your Honor, your point about it not
17 really mattering is exactly right, because section 139
18 of the restatement specifically says you apply in a
19 privilege situation -- which this is -- you apply
20 significant relationship's test unless, quote,
21 "admission of such evidence would be contrary to the
22 strong public policy of the forum."

23 THE COURT: Sure. And that's a big --

24 MR. CERESNEY: And --

25 THE COURT: That's a -- that's a --

1 MR. CERESNEY: That's huge.

2 THE COURT: -- big aspect of what's going on
3 here.

4 MR. CERESNEY: Game over, Your Honor, I
5 think.

6 What you have going on here is you have New
7 Jersey in Maressa specifically saying that this is such
8 an important public policy, that it will overcome the
9 rights of the plaintiff to recover in a libel action if
10 the shield statute --

11 THE COURT: Now, I -- I --

12 MR. CERESNEY: -- covers it.

13 THE COURT: I know you've alleged that Mr.
14 O'Brien sometimes writes in New Jersey, but when you
15 look at the balance of the public policy aspects, the
16 way I view it -- again, I use a totality test, I can't
17 help it, my background's being a criminal judge, we all
18 know that. But I look at the totality of the
19 circumstances in a situation like this, what's the
20 public interest -- the public policy interest in New
21 Jersey? A protection of the journalist.

22 But is he a New York journalist or is he a
23 New Jersey journalist? And when we're looking at
24 that, would it really impair the public policy for the
25 State of New Jersey to apply New York law to this;

1 when, although he is a resident, he certainly is a
2 journalist in New York. As I've said, he states his
3 professional reputation, he obtained his reputation by
4 being a New York journalist and merely living across a
5 body of water would not change that.

6 And -- and, again, -- so when we're looking
7 at public policy here, we're looking at the public
8 policy of the State of New Jersey, the forum where --
9 where he selected and I'm saying to myself, "Well, wait
10 a second." Remember, yeah, I think the case law says
11 it's a totality test. So I look at the quality of the
12 elements. And by the way, if we looked at quantity,
13 New York would be applicable.

14 If we look at the quality of what's going on
15 here -- and -- and again, another factor -- and I know
16 you probably don't realize it -- when you -- when you
17 read through the entirety of the book -- and I don't
18 know if you gentlemen have done that and I'm not gonna
19 put you on the spot --

20 MR. CERESNEY: We have, Your Honor.

21 THE COURT: Okay. You have or have not?

22 MR. CERESNEY: We have. We have.

23 THE COURT: A couple times probably.

24 MR. CERESNEY: Uh-huh.

25 THE COURT: At least. If you look at the

1 number of references to where the interviews took place
2 --

3 MR. CERESNEY: Yeah.

4 THE COURT: -- or where the interview --
5 well, most of it occurred in New York City and we --
6 we're talking about the work here. I know we're -- I
7 just want to tell you what further contacts there are.

8 MR. CERESNEY: Sure and here's where I get --

9 THE COURT: Short of being in a Ferrari in
10 West Palm Beach speeding through and didn't get a
11 ticket and --

12 MR. CERESNEY: It's -- here's what we did,
13 for example, --

14 THE COURT: Go ahead.

15 MR. CERESNEY: You -- you said that the
16 policy is to protect the journalist.

17 THE COURT: Right.

18 MR. CERESNEY: I think that the -- that's too
19 narrow, with all respect, a too narrow of a conception
20 of what the policy is. It --

21 THE COURT: Well, it's to protect the
22 litigant?

23 MR. CERESNEY: It's to protect --

24 THE COURT: In New Jersey?

25 MR. CERESNEY: -- the sources. It's to

1 protect the public, who has a right to this
2 information.
3 THE COURT: We're not gonna get there yet,
4 because we're gonna be then talking about what is and
5 isn't news.
6 MR. CERESNEY: That's right, Your Honor, and
7 we're happy to talk about that. I think that the --
8 THE COURT: Well, not right now.
9 MR. CERESNEY: Okay. And -- and --
10 THE COURT: We'll get to that.
11 MR. CERESNEY: And we will. But let's just
12 assume for the moment that this is news. They're --
13 it's not just the journalist that the statute is
14 intended to protect. I think that that, with all
15 respect, is too narrow a conception of this. What this
16 is, a desire to protect the confidential sources and
17 the news-gathering process, so that the public can
18 benefit from the information that is received through
19 that process. It's a much larger policy than simply
20 the notion of Mr. O'Brien being protected.
21 I think that's clear from Maressa, Your
22 Honor. If you read Maressa -- and I know Your Honor
23 has probably many times, I certainly have -- it comes
24 through that this is not just a policy which protects
25 Mr. O'Brien, it's a conception that the legislature has

1 made a judgment that there is a benefit in a news-
2 gathering process that is unhindered and un -- and
3 unhampered by anybody looking at the -- the -- that
4 actual process. And that people who fear retribution,
5 confidential sources, should be encouraged to come
6 forward, knowing that this broad statute would apply.
7 THE COURT: Well, if this is a category of
8 news, whether I use the New Jersey law or -- or the New
9 York law, you're still protected with an absolute
10 privilege, right?
11 MR. CERESNEY: I -- I agree.
12 THE COURT: If it's a confidential source.
13 MR. CERESNEY: I agree. And that's why the
14 first thing I was gonna say --
15 THE COURT: In fact, your adversary agrees,
16 it's -- no matter what the law is that I apply, the
17 outcome is the same. So, is it -- don't you agree with
18 that?
19 MR. CERESNEY: I actually agree with that,
20 but --
21 THE COURT: If it's news?
22 MR. CERESNEY: -- for a different reason.
23 Because I think, certainly on the confidential sources,
24 it's absolute and we don't have to even go any further.
25 And on the non-confidential sources, I don't think he

1 met his qualified -- his burden of overcoming the
2 qualified --

3 THE COURT: You just made a broad statement
4 that I don't agree with. You said it qualifies as
5 news. I forget how you just said it, but --

6 MR. CERESNEY: Confidential source.

7 THE COURT: There -- there are -- there's
8 marked differences in the languages of New Jersey
9 statute and even the absolute privilege statutes in the
10 State of New York. And actually, it's a broader view
11 of -- or a more narrow view in New York of what's the
12 news as opposed to what's defined as news in New
13 Jersey.

14 MR. CERESNEY: That's right..

15 THE COURT: But --

16 MR. CERESNEY: I agree. But my point is, the
17 result here is the same, Your Honor, because here the
18 confidential sources, at least on the confidential
19 source information, given the nature of these
20 confidential sources here, both New York and New Jersey
21 would protect those absolutely. Forget about the
22 language, the result is the same under both, under the
23 confidential sources.

24 On the non-confidential sources -- and,
25 actually, what we tried to do, Your Honor, because this

1 is obviously a little bit of a -- of confusing, as in
2 our brief we had a chart where we sort of tried to put
3 the different categories and what would be the
4 privilege that would apply under those different
5 categories, and it's on page 33 of our brief. But for
6 the non-confidential information, what we're talking
7 about in New York is a qualified privilege and what
8 we're talking about in --

9 THE COURT: Yeah, I'm not --

10 MR. CERESNEY: -- New Jersey --

11 THE COURT: -- sure I got a constitutional
12 test.

13 MR. CERESNEY: Right. And the absolute
14 privilege. And I don't think they've met the qualified
15 privilege here anyway with regard to the non-
16 confidential information. They haven't shown
17 materiality, criticality or exhaustion. And we can
18 talk about that later, to the extent Your Honor gets
19 there. I don't think he should, because I think New
20 Jersey law applies; but even if you do, don't think
21 they've met that.

22 So our -- you know, my point, Your Honor, is
23 New York law, even if it applies, you know, we still
24 are protected here and the information would still be
25 privileged. But I think it's clear that because the

1 policy of New Jersey is so broad, because it applies so
2 strongly, because the legislature has made such a
3 strong statement, as indicated in Maressa, that New
4 Jersey has to control here. And he's filed suit here,
5 so ultimately it -- if that's the ruling, it's
6 certainly not any inequity to him.

7 THE COURT: Any response?

8 MR. RESSLER: Judge, just one response with
9 respect to counsel's statement that the sources -- the
10 sources are ultimately among the parties who really
11 have the crucial interest here. I don't know where
12 they live. For all we know, they're New Jersey -- I
13 mean, they're New York residents and they work in New
14 York and they live in New York. If defendants want to
15 tell us where they live, that would be a start towards
16 disclosing who they are. But of course, you know,
17 we're in a catch-22, this whole hearing is about our
18 need to know who those sources are, their names, from
19 there we would find out, you know, what -- what
20 jurisdiction they live in, work in, etcetera.

21 So, I think it's difficult to say that the --
22 the statutes protect the sources and we're supposed to
23 decide which statute applies based on protecting the
24 sources, when we don't even know where the sources live
25 and where they work.

Findings by the Court

23

1 THE COURT: We're talking about -- when you
2 talk about sources, I categorize a source as page 154
3 sources --

4 MR. CERESNEY: Right.

5 THE COURT: -- or other confidential sources
6 that have been referred to throughout the book. And
7 there are not a lot of them, but we certainly don't
8 know where the page 154 sources live. And we'll talk
9 about whether or not they're confidential or non-
10 confidential in a moment, because I'm -- I -- I tell
11 you, in weighing everything, there's no doubt there was
12 a conflict in the laws.

13 There's no doubt about that New Jersey public
14 policy is a strict policy to protect journalists.
15 There's no doubt about it. Very little in dispute as
16 to, well, where the situs of the tort occurred and that
17 the tort occurred in New York, it was published in New
18 York. But for the publication, we wouldn't be sitting
19 here today. No question that damage was done to the
20 plaintiff in New York, as well as throughout the 50
21 states in the United States and maybe internationally.

22 There's no doubt that the plaintiff is a
23 resident of New York. There's no doubt that the
24 journalist is a New York journalist that relies upon
25 that reputation as a New York journalist in his ties to

1 New York. To not only market himself, but to -- to
2 continue to do what he does. He doesn't use the New
3 Jersey press in any way, shape or form, other than the
4 fact that the New York Times may be actually printed in
5 New Jersey and disseminated throughout the world.

6 The majority of the contracts are with the
7 state of New York. Again, but for the selection of
8 this -- the forum here -- and, again, I shake my head
9 every time I -- I look at this case, say why was it
10 even filed here, I have no idea why it was filed here.
11 The fact that O'Brien is a resident of the State of New
12 Jersey -- which is an important element, but what is it
13 that -- that New Jersey law set -- set out to do? It
14 set out to protect journalists, New Jersey journalists
15 for the most part.

16 And I know he's a resident and he happens to
17 be a journalist, but he's a journalist in New York, not
18 in New Jersey. And -- and when you -- when you see --
19 when you rely upon that, when you reach out and you
20 reach out and you associate yourself with a state, you
21 rely upon that state for your reputation and your
22 credibility. You then cannot hide by the river or a
23 bridge or a tunnel to protect yourself when you make an
24 alleged defamatory statement. And -- and that, I
25 think, gentlemen, is the gravamen of -- of what I'm --

1 you're done talking and I'm just starting.

2 MR. CERESNEY: Okay, Your Honor.

3 THE COURT: So, when I say that are more
4 contacts -- I mean, you -- essentially, you look at the
5 conflicts laws, it all boils down to a qualitative
6 analysis of who has the most contact in this particular
7 case. And -- and I recognize that New Jersey has a
8 balanced approach to things; it talks about the
9 absolute privilege; it talks about non-confidential
10 sources; it protects, to some degree, the rights of the
11 journalist, as New Jersey does.

12 But New York has a more balanced approach in
13 my view, because it also protects the litigants in
14 regard to non-confidential sources. It also has, I
15 believe -- and no disrespect intended to the
16 legislature of this great state, which had the wisdom
17 to appoint me and then reappoint me later on -- I think
18 that the more-balanced view of this particular conflict
19 rel -- would require me to rely upon New York law.
20 Again, but for the selection of the forum -- and, again
21 -- and I'm not diminishing that Mr. O'Brien lives in
22 New Jersey -- but, but for the selection of this forum,
23 we wouldn't be having this conversation. I -- I hazard
24 a guess that no one would be yelling about conflicts of
25 law in New York, they wouldn't say, "Well, New Jersey

1 law applies, because Mr. O'Brien resides in New
2 Jersey."

3 So, it would not frustrate the intent, I
4 don't believe, the public policy intent of the State of
5 New Jersey to apply New York law in this particular
6 instance. Again, well lots of the variables I referred
7 to, where the interviews took place, the book is
8 actually marketed as TrumpNation, he lives -- O'Brien
9 lives outside of TrumpNation, also known as New York
10 City. The book is marketed as a metropolitan New York
11 type of publication. So, gentlemen, when I apply what
12 I believe the law to be -- and I -- I note that this
13 will probably be reviewed by an Appellate Court and I
14 certainly encourage it. I never professed to be
15 perfect in my decisions, I only do the best job that I
16 can.

17 Gentlemen, I -- I do find that New York law
18 would be applicable when I balance everything, when I
19 balance all of the areas that I'm required to look at
20 with respect to the conflict of laws, the interest of
21 interstate comity. Would it frustrate New Jersey's
22 purpose in the shield law? No. The interest of the
23 parties certainly -- the interest of the parties is to
24 redress an alleged grievance of libel and defamation.
25 And, certainly, applying New York law would not

1 frustrate that purpose.

2 And then, that's what tort law is all about,
3 to -- it's preventative, it serves as a deterrent. The
4 tort did occur in New York. The injury occurred in New
5 York and elsewhere, granted. Allegedly. The interests
6 of judicial administration certainly that would not be
7 impaired by me utilizing New York law to determine this
8 particular issue. And the competing interests of the
9 state -- the states have a very similar interest in
10 protecting journalistic integrity and sources, as
11 counsel have said, but also New York State law, again,
12 if this is news, New York State law certainly takes
13 into consideration the interest of the litigant.

14 And by the way, now I want the Appellate
15 Court to know that when we talk about the issue of
16 news, whatever my determination is on the issue of
17 news, I want the Appellate Court to apply -- and we're
18 talking about the competing interests of the states.
19 Because in the even this Court makes a determination,
20 having heard argument, that this is not news, certainly
21 the new -- the -- counsel's -- plaintiff's counsel's
22 assertion that the -- the determination would be the
23 same no matter what state it was might, in fact, be
24 appropriate.

25 But I -- I draw counsels' attention to the

1 fact that when I read the law and I compare the
 2 definition of news in New York to the definition of
 3 news in New Jersey, I find separate and distinct
 4 definitions. And now, I want to hear from you about
 5 the -- first of all, is this news? And I'm holding up
 6 the book here, Exhibit A it says on the book. Is it
 7 news?
 8 MR. RESSLER: Judge, this is -- this is not
 9 news.
 10 THE COURT: What's news?
 11 MR. RESSLER: This isn't even close to news.
 12 Under --
 13 THE COURT: Other than Iverson got traded and
 14 Trump didn't fire Miss USA, that's --
 15 MR. RESSLER: Let's --
 16 THE COURT: I guess that's news. It's a
 17 relatively recent event, it occurred yesterday, and
 18 it's being reported today.
 19 MR. RESSLER: Judge, news in New York is
 20 defined in the statute and Your Honor is correct, based
 21 on the last comment --
 22 THE COURT: Well, is it news that Marla
 23 Maples had to be moved from St. Regis at the time that
 24 the hotel was sold to some other location? Is that
 25 news?

1 MR. RESSLER: It's not news, based on --
 2 THE COURT: Happened awhile ago.
 3 MR. RESSLER: It's not news, based on the
 4 definition in the -- in the New York statute. Which
 5 says that news shall mean, "information or
 6 communication concerning local, national or world-wide
 7 events or other matters of public concern or public
 8 interest or affecting the public welfare."
 9 The New York legislature clearly intended for
 10 news to touch upon matters of public concern and public
 11 intent -- or public interest, affecting the public
 12 welfare. This book is a gossipy, sensationalist book.
 13 It talks about things like whether Donald Trump uses
 14 Viagra. You can open it up to a random page -- Do you
 15 believe in God? Did you get stoned in college? Do you
 16 think Lera Jing (phonetic) sucks up to you too much?
 17 The book repeats the F-word --
 18 THE COURT: Do you know the answers to all
 19 those questions? If you do, send those responses to
 20 the address in the front and you could win a prize --
 21 MR. RESSLER: Exactly.
 22 THE COURT: -- if Mr. O'Brien indicates in
 23 his book.
 24 MR. RESSLER: And -- and that's a good point.
 25 You know, this -- this book contains --

1 THE COURT: And by the way, I'm -- I -- for
2 those of you that don't know that, that's what is
3 actually a section here that Mr. O'Brien invites people
4 to take the Trump Quizzes in each and every chapter, and
5 depending on how well you do, you could win a prize. I
6 think it's something like dinner with his -- O'Brien's
7 mother or something.

8 MR. RESSLER: Correct, Judge. And these --
9 these quizzes -- and Your Honor is referring to these
10 quizzes at the end of each chapter -- and with all due
11 respect to Mr. O'Brien, this is a juvenile attempt at -
12 - at humor. Maybe some people find it funny, maybe
13 not, but the bottom line is --

14 THE COURT: I found it funny at times. I
15 mean --

16 MR. RESSLER: At times. The -- the Viagra
17 comment might have been --

18 THE COURT: I like the areas, but go ahead.

19 MR. RESSLER: But the -- but the bottom line
20 is that this isn't news. You know, news and -- and we
21 -- news doesn't have these kinds of questions. News
22 doesn't repeat the F-word and makes gynecological
23 references throughout.

24 And what -- what's actually interesting,
25 Judge, is even in the -- even in this chapter that the

1 defendants claim, you know, was printed in the New York
2 Times, this "TrumpBroke" chapter, chapter 6, you know,
3 that chapter itself is replete with scatological
4 references. You open up a page and it talks about --

5 THE COURT: Well, that's rather newsworthy,
6 it's of some -- it was the -- his net worth, it is
7 talking about net worth, because that's relatively
8 recent in conjunction with the publication of the book.

9 MR. RESSLER: But whether -- whether Donald
10 Trump is -- is worth 150 to 250 million or a billion
11 dollars is -- is not what the New York legislature had
12 in mind when it talked about local, national or
13 worldwide events, matters of public concern, public
14 interest, matters affecting the public welfare. It
15 affects Mr. Trump, it affects his reputation, his
16 ability to trans -- transact with business, there's no
17 question about that, but it doesn't affect what the New
18 York legislature was focusing -- focusing on. And even
19 --

20 THE COURT: Well, I think there's a question
21 about whether or not it affects his ability to do
22 business, that's why they're defending the case, they
23 say there's no damages, but that's beside the point.

24 MR. RESSLER: Yeah, fair enough, Judge.
25 But even in this chapter, I -- again, the

1 book -- the book is -- is replete with these references
 2 to what no one would consider news. Because even in
 3 this "TrumpBroke" chapter, O'Brien talks about an
 4 interview; Leona Helmsley has a Playboy; referring to
 5 Donald's girlfriend, Marla Maples, as Marla Meatball,
 6 Marble Meatball, Marla Nipple, Meatball Marla, Maypole
 7 Marla. I mean, every page of the book has this kinds
 8 of -- this kind of attempt at humor.

9 This is as much comedy as anything else, but
 10 under no question, especially when the New York
 11 legislature has defined news, under no question can
 12 this book be described as news and --

13 THE COURT: Well, you made some reference to
 14 New Jersey law. Let's assume the Appellate Division
 15 says Snyder, you're all wet, New Jersey law applies,
 16 how about New -- under New Jersey law? It's -- does it
 17 fit within the definition of news here that -- isn't
 18 New Jersey law protective of even books like this, that
 19 -- that have those characteristics?

20 MR. RESSLER: It doesn't, Judge, and New
 21 Jersey law is clear that news is contained -- and I
 22 think it's seven particular specifically enumerated
 23 news media. And books is not one of those seven.
 24 Newspapers, magazines, news agencies, press
 25 associations, T.V., radio.

1 THE COURT: How's A.M. Best in there, isn't -
 2 -

3 MR. RESSLER: But not books.

4 THE COURT: The A.M. Best, I know what A.M.
 5 Best is, but A.M. Best was protected by New Jersey law,
 6 wasn't it?

7 MR. RESSLER: It was. Judge, A.M. Best is a
 8 book only with respect to the fact that it -- that it
 9 has a spine and it's, you know, hardcover binders. But
 10 A.M. Best, as the court in that case -- and I think it
 11 was the Burnett case -- repeatedly called it, it was a
 12 trade publication. It's 100 years old, it's updated
 13 annually, it goes into minute detail about, I think, 21
 14 --

15 THE COURT: It's wholly statistical --
 16 actually, it's a breakdown of the analysis of
 17 statistical they thought that law state was claims --

18 MR. RESSLER: Right.

19 THE COURT: -- things of that nature.

20 MR. RESSLER: Correct. About 2,100 insurance
 21 companies in the U.S. and Canada and courts rely on --
 22 on this book -- and, again I -- I use the phrase book
 23 in terms of the fact that it's bound with a hardcover
 24 spine. We have it right here. The courts rely on
 25 this, because this is an authoritative source, court --

1 courts use it in this state to set interest rates,
 2 etcetera. This is completely different, Judge. This,
 3 I'm now holding up the Best trade reports, is
 4 completely different from TrumpNation.

5 (Pause)

6 THE COURT: Well, Chapter 6 did have some
 7 facts in it, didn't it?

8 MR. CERESNEY: It did, Your Honor, and that's
 9 where I was gonna go first. I mean, I think what we're
 10 -- we have to define what we're talking about here.

11 The allegedly defamatory statements here are
 12 really -- and we know that it's actually now even more
 13 clearly than we knew it before, since there was some
 14 ambiguity I think before -- but in the defendants' supp
 15 -- in the plaintiff's supplemental interrogatory
 16 responses yesterday they specifically only identified
 17 the statements in -- at least the written statements,
 18 as far as what is allegedly defamatory. They allege --
 19 they identified really only this page 154 reference to
 20 the confidential source. So that's all we're talking
 21 about, Your Honor, when we're talking about is it a
 22 matter of public interest. That's what we're talking
 23 about, Your Honor.

24 And I -- it -- I think that's -- if what --
 25 if that's what we're talking about, even if we're

1 talking about the broader book, I would say the answer
 2 it's still news, but I think that's all we're talking,
 3 Your Honor, because that's the allegedly libelous
 4 statement. And the New --

5 THE COURT: Well, yeah, that's an allegedly
 6 libelous statement, but there may be other -- there are
 7 -- there are other confidential sources -- and we'll
 8 talk about -- I can tell you --

9 MR. CERESNEY: But the --

10 THE COURT: -- where each and every
 11 confidential source is referred to in this book. And
 12 you made a statement about what page 154 is and we'll
 13 talk about whether or not that's a confidential source
 14 or an anonymous source or what kind of source it is;
 15 because, frankly, your client never identified what
 16 kind of source it was.

17 MR. CERESNEY: You -- you --

18 THE COURT: I lost you. Right?

19 MR. CERESNEY: You lost me, Your Honor. I
 20 mean --

21 THE COURT: Did you read every footnote in
 22 this book?

23 MR. CERESNEY: Yes.

24 THE COURT: Okay. Every time he refers to an
 25 anonymous source he says it's an anonymous source, he

1 puts a footnote next to it.
 2 MR. CERESNEY: That's right.
 3 THE COURT: Every time he says it's a
 4 confidential source, puts a footnote next to it. I
 5 challenge you to find on 154 any reference to the
 6 anonymity or confidentiality. None whatsoever. He
 7 said "three people close to Donald Trump say."
 8 MR. CERESNEY: Right.
 9 THE COURT: Nothing! And this guy is really
 10 precise. Mr. O'Brien is extraordinarily precise in his
 11 footnotes, chapter and verse, tells me everything that
 12 I want to know about where the information came from.
 13 Never says -- in retrospect it's confidential, he says
 14 it today, he says it in the litigation, never once does
 15 he say it in the book. He doesn't -- where is it?
 16 MR. CERESNEY: Well --
 17 THE COURT: Counsel, you've got three people
 18 --
 19 MR. CERESNEY: Your Honor --
 20 THE COURT: -- sitting there.
 21 MR. CERESNEY: Your Honor, I don't think
 22 there's any requirement for him to say in the book that
 23 these are, quote, confidential --
 24 THE COURT: Wait a minute!
 25 MR. CERESNEY: -- report --

1 THE COURT: Listen! I love lawyers, I was
 2 one of ya and I still am a lawyer, but when you have --
 3 include something in there, you go to great lengths to
 4 identify who's confidential and who is not and you
 5 completely don't say anything -- and take a look at
 6 page 154 -- but let's go through the -- the footnotes,
 7 if you want. And I can tell you each in it, because I
 8 -- I always find this stuff interesting. I -- page 254
 9 of the book, footnote number 44, Chapter 4 "TrumpLand;"
 10 "Author interview with confidential source
 11 March 31, 2005."
 12 Let's see what that one --
 13 MR. CERESNEY: Your Honor, let me explain why
 14 he didn't put them --
 15 THE COURT: Wait a minute! Well, let me --
 16 let's --
 17 MR. CERESNEY: Well, here's why he didn't,
 18 Your Honor. I think the Court --
 19 THE COURT: You know that he didn't.
 20 MR. CERESNEY: -- should understand.
 21 THE COURT: Right?
 22 MR. CERESNEY: I know that he didn't and the
 23 reason why is because he didn't want to put the date of
 24 the actual interviews, because he was concerned --
 25 THE COURT: That's a great --

1 MR. CERESNEY: -- about put -- about somebody
 2 triangulating and figuring out who the source is by
 3 having the date of when the interview had. Maybe
 4 somebody was looking at his --
 5 THE COURT: Well, you --
 6 MR. CERESNEY: -- at -- at who knows,
 7 whatever information --
 8 THE COURT: Maybe. You said maybe.
 9 MR. CERESNEY: No, but that would be --
 10 THE COURT: You don't know.
 11 MR. CERESNEY: I believe that would be his
 12 statement about why he didn't do that, Your Honor.
 13 THE COURT: But he could have said -- what --
 14 anonymous source --
 15 MR. CERESNEY: And, in fact, in his --
 16 THE COURT: -- not wishing to be identified,
 17 like he says -- I'll tell you where he says that.
 18 Where it says:
 19 "Interviews in 2005" -- number 2 -- page 254,
 20 footnote number 51: "Interview in 2005 with two former
 21 Trump Organization executives who requested anonymity."
 22 Why is it such a big problem to not have it
 23 on page 154, when he has it in footnote number 51, --
 24 MR. CERESNEY: But Your Honor --
 25 THE COURT: -- as set forth -- wait a second!

1 I mean, you know, it's really good when you get painted
 2 in a corner by your own work.
 3 MR. CERESNEY: But there's no -- but there
 4 was no requirement under any shield statute, New York,
 5 New Jersey, any shield statute that they specifically
 6 say that these sources in the book -- like, for
 7 example, Your Honor, this was a newspaper report. In a
 8 newspaper report he doesn't have to say that these are
 9 sources who have requested confidentiality, who have --
 10 who have forbidden me from revealing their identity.
 11 It is obvious from this -- from this port --
 12 from -- from the book and if you look at his
 13 certification, Your Honor, there's no issue of fact on
 14 this. Paragraph 6 of his certification submitted in
 15 support of this motion says:
 16 "I promised confidentiality to three
 17 individuals who -- with direct knowledge" -- and it
 18 goes on to say "it is my understanding that these three
 19 individuals fear retribution from Trump if their
 20 identities are revealed."
 21 THE COURT: Yeah, but -- but you're -- you're
 22 making that statement in this day and age, post-
 23 litigation initiated. You know what's the truest ex --
 24 the truest indicator of how the -- or what he
 25 considered these people to be? Look at what he wrote

1 when he wrote it, when he published it, what he did do,
2 what he didn't do. It's the omission and the silence
3 on page 154 that causes me more concern than anything
4 else.

5 When I look at how -- your -- your author was
6 extraordinarily precise -- and, again, I went through
7 each and every -- I went through each page, I -- I
8 highlighted which were confidential sources, what the
9 confidentiality was that was talked about, including,
10 you know, in one case I think I already talked about
11 moving Maples from the St. Moritz. Let's see, one
12 other was reliance upon find -- family money to bail
13 him out. A couple others were, let's see:

14 "Donald's foray into Atlantic City and steps
15 to expedite its process with meeting with the New
16 Jersey -- by meeting with the New Jersey Attorney
17 General."

18 Stashing Marla, I have. We're talking about
19 -- and, again, anonymity? He put in the footnotes.
20 And, again, he didn't have to --

21 MR. CERESNEY: Let me just --

22 THE COURT: -- worry about triangulation had
23 he just said broadly that these people -- but you --
24 see, we got off on another tangent here.

25 MR. CERESNEY: We clearly did, Your Honor.

1 THE COURT: I was on the news, but you --

2 MR. CERESNEY: But -- but let me just read
3 you this --

4 THE COURT: You -- you saw me smile --

5 MR. CERESNEY: I did.

6 THE COURT: -- at you when you said
7 confidential.

8 MR. CERESNEY: I -- I did, Your Honor, and I
9 -- and I took your cue to --

10 THE COURT: You sure baited me.

11 MR. CERESNEY: I too your cue, Your Honor.
12 But I think if you look at the language in the New York
13 statute, you are, with all respect, importing into the
14 statute a requirement that's just not there for the
15 application of the confidential aspect of the New York
16 statute. It says -- it says:

17 "Having temporary -- refusing or failing to
18 disclose any news obtained or received in confidence or
19 the identity of the source of any such news coming into
20 the person's possession in the course of gathering or
21 obtaining news for publication."

22 It says nothing about having to identify at
23 the time of the publication that this individual has
24 requested anonymity --

25 THE COURT: I agree with you.

1 MR. CERESNEY: -- and doesn't -- and -- and
2 so, therefore --

3 THE COURT: I agree with you.

4 MR. CERESNEY: -- I think that this, it would
5 be a re --

6 THE COURT: That's what the statute says.

7 MR. CERESNEY: It is what the statute says
8 and I think it would be a -- it would indeed be going
9 very far beyond the statute to require there to be in
10 the actual publication -- forget about, you know,
11 there's -- there's really no issue of fact here, no
12 issue of fact that's -- there's nothing in the record
13 to the contrary that these people have not requested
14 anonymity. He has said it under oath, he has said it
15 in his certification, that is clear to -- to everybody
16 in this court.

17 THE COURT: Well, don't you think it's a
18 question of fact when he took the time in each and
19 every time he talked of an anonymous source or --

20 MR. CERESNEY: I -- I do not.

21 THE COURT: -- a confidential source, the
22 footnote it completely -- doesn't even say it in the
23 body of the text of the book, he has said -- and -- and
24 I spoke anonymously to three executives -- didn't even say
25 that, it just says I talked to three executives and

1 they gave me the numbers.

2 MR. CERESNEY: But there's no dispute that --

3 THE COURT: That they thought that's what --
4 again, they stated their opinion they thought --

5 MR. CERESNEY: But --

6 THE COURT: -- that's what it -- it was.

7 MR. CERESNEY: That's right. But -- but
8 there's no dispute about the fact that these
9 individuals had requested confidentiality, had a
10 confidential request, and he put in a certification to
11 that effect at the time and the statute requires --

12 THE COURT: Well, let's go back to the news
13 issue.

14 MR. CERESNEY: Let's go back to the news,
15 Your Honor.

16 THE COURT: But I'm glad I got that out on
17 the record, because if the Appellate Court looks at
18 this, I want them to know that, listen, this -- Mr.
19 O'Brien went to great lengths to make sure that he
20 footnoted everything, the interview dates, Playboy
21 magazine, whoever he -- wherever he got information
22 from, he was very careful in what he did. And he --
23 all of a sudden, he -- he had a lapse in his being
24 careful --

25 MR. CERESNEY: Well, what --

1 THE COURT: -- in this particular paragraph.
2 MR. CERESNEY: What I'm saying Your Honor is
3 it was a conscious decision not to do that. Because to
4 do that -- these three confidential sources are the --
5 you know, they -- as he says in his certification --
6 fear retribution because of their --
7 THE COURT: Yeah, but --
8 MR. CERESNEY: -- who they are.
9 THE COURT: I understand.
10 MR. CERESNEY: And so to put a footnote with
11 a date --
12 THE COURT: Okay. So let's talk about the
13 news then.
14 MR. CERESNEY: Sure.
15 THE COURT: Let's go back to the news. Is it
16 -- is this news? And -- and do I look just at page 154
17 or do I look at the totality of what I have in front of
18 me, this book, to determine whether or not the book is
19 news?
20 MR. CERESNEY: Yes. Your Honor, I think
21 actually, if you look at either it's still news. But
22 let's just focus on 154 for a minute, because I think
23 that is the clearest example of this. And one of the
24 things you said, Your Honor, actually is striking,
25 which is he did footnote very -- almost all of his

1 sources in there, with the one exception that --
2 THE COURT: Pretty much.
3 MR. CERESNEY: -- you talked about. And the
4 reason -- there's a reason for that one. But there is
5 -- this is written not as a -- as a book which is just
6 simply no sourcing to whatever -- he's done a lot of
7 research, extensive reporting. It's an extension of
8 his report that he did for the newspaper. He took his
9 files that he used for the newspaper, he took his
10 interviews that he did at the newspaper, he -- he did
11 additional interviews, merged those files and
12 essentially used the same exact methods for the book as
13 he did for the newspaper reporting.
14 And, you know, when we talk about the topics
15 at issue here, the statute -- the New York statute,
16 Your Honor, you read the -- I think you read the
17 definition before. It says, "matters of public concern
18 or -- or public interest or affecting the public
19 welfare." So you have that word -- those words public
20 interest in there between public concern and affecting
21 the public welfare. It's obviously much broader than
22 just the notion of some public -- significant public
23 event like whether we should get out of Iraq or not,
24 it's much broader than that.
25 As Your Honor pointed out when you first came

1 on the bench this morning, the types of news that's
2 been reported in the past couple of days really
3 illustrates a point that news is incredibly broad. And
4 the people who make that determination of what is news
5 and what is news are not courts, they're not Mr. Trump,
6 most certainly, they are the newspapers, they are the
7 journalists in this country who make the decision about
8 what is of interest to the public.

9 And if you look at some of the things that
10 have been of interest to the public in the past few
11 days: the Miss USA Pageant, whether article in the New
12 York Times on sperm whale vomit; Your Honor, there --
13 there are issues of much less public interest,
14 certainly, than this issue here, which is Trump's net
15 worth, which had been reported in the New York Times.
16 In fact, if you look at our brief, Your Honor --

17 THE COURT: Sort of a report about it -- look
18 in the book, it tells you every place where --

19 MR. CERESNEY: Every place. Washington Post

20 --
21 THE COURT: -- Forbes magazine, the
22 controversy as to what his net worth was in any given
23 year, as to whether or not he met the top 20 or
24 whatever number it was Forbes utilizes.

25 MR. CERESNEY: All over the place, Your

1 Honor. It is -- it is a matter -- it -- I don't know
2 how it makes any sense that it's a matter of public
3 interest, ultimately. And it's not for the Court and
4 it's not for Mr. Trump to determine it.

5 Now, what you're focused on, Your Honor, I
6 think, what it really comes down to -- and I would
7 submit, by the way, that lots of those other issues
8 that are in the book, Mr. Trump's business activities
9 over time, his involvement with casinos, the other
10 aspects of his business activities, those are also of
11 public interest. In fact, Mr. Trump himself has
12 written numerous books on these issues that people buy
13 and because they're interested and -- and they are --
14 they sell because they're public interest.

15 But what you're focused on, I think, which is
16 what -- what -- which you have sort of pointed out with
17 the quizzes and with some of the comments about the way
18 that the book is written, is the tone of the book. The
19 tone of the book, really, that's really what -- what
20 you're focused on. And I think, ultimately, the tone
21 of the book is irrelevant, it's the content of the
22 information that's being conveyed. Tone is not
23 something that enters into the equation as to whether
24 it is news or not.

25 I mean, you look at some of the articles that

1 we just talked about, about the Trump USA Pageant. I
 2 mean, you know, this -- some of the articles
 3 surrounding this issue are, you know, the idea of
 4 people being rehabilitated, do they have the right to
 5 be redeemed. Those -- obviously, those are lighter
 6 articles, those are lighter tones, but those are still
 7 news, those are still reporting on information to the
 8 public.

9 And -- and I think that these quizzes don't
 10 transform what is news, what is a matter of public
 11 interest into something that is -- is not. They are --
 12 if -- it's -- it's a tone that's used to make the book
 13 more readable, it's a tone to make a point about Mr.
 14 Trump's role in all of these activities. But it does
 15 not undermine the fact that it conveys information
 16 about modern matters of public interest.

17 And Your Honor talked about New Jersey law on
 18 this before, and when you -- when you were talking to
 19 Mr. Ressler --

20 THE COURT: So it -- the -- the tone is -- is
 21 -- would it be fair for you to say it has the
 22 characteristics of entertainment and news in it?

23 MR. CERESNEY: I don't know if that's -- I
 24 think what -- what it is, is it makes it more readable,
 25 Your Honor, or at least it's a tone that conveys in --

1 it conveys -- it's a tone that conveys some information
 2 about which Mr. O'Brien is -- his views on certain
 3 things are, but it does not undermine, in any respect,
 4 the fact that it is an issue of public interest in the
 5 -- in the matter in which it's conveyed. I -- that's
 6 what I would say.

7 And the word entertainment, Your Honor, the
 8 reason I don't sort of agree with that, because there's
 9 no definition of what entertainment -- it could be that
 10 things -- certain things that are entertainment are
 11 also news. There could be a fair amount of overlap
 12 between those two things. But the statute doesn't deal
 13 with entertainment, it deals with news and it --

14 THE COURT: Well, what do you think the
 15 primary function of the book is?

16 MR. CERESNEY: To convey information, Your
 17 Honor. To convey impressions about Mr. Trump -- Mr.
 18 O'Brien says it better than I can, Your Honor, in his
 19 certification. He says these -- he says, and I quote:

20 "That TrumpNation evolve" -- this is
 21 paragraph 7 of his certification:

22 "TrumpNation evolved from my 2004 reporting in the
 23 Times about Trump. My goal in writing the book was to
 24 leverage my previous reporting for Marriage Trump
 25 Biography, the Wall Street Journal, Bad Bet and the

1 Times, to provide the public with extended information
2 about Trump's business career and persona, while
3 detailing how he became a social phenomenon, with
4 traction in different business and cultural realms. I
5 also wanted to use Trump's life and career to report
6 more broadly on areas of public interest on which I
7 have reported for the Times and other publications,
8 including on Wall Street and the financial world, the
9 real estate and casino businesses, the cult of business
10 figures and the broader cultural fascination with
11 wealth."

12 I mean, I think that says it better than I
13 could ever say it, Your Honor. And I think the -- it's
14 -- it's --

15 THE COURT: It's because he's a professional
16 writer.

17 MR. CERESNEY: He is a writer, Your Honor,
18 and -- and that -- those are his words. And -- and
19 ultimately that was what he was trying to do with this
20 book and I think, you know, we can all sit here and
21 talk about the tone, but it does -- that was the intent
22 and that was what it intended to accomplish. And I
23 think, clearly under New York and New Jersey, it's --

24 THE COURT: So, as I -- as I said to you when
25 I was talking to you about the confidential sources,

1 lack of confidential sources, failure to identify
2 someone as anonymous or confidential, the same could
3 hold true with how it is that Mr. O'Brien presents the
4 book, what he wish -- how he attempts to market it.
5 He's attempting to secure financial benefit from the
6 sale of the book and how it is -- what he says about
7 the book and what he does to market the book later on
8 comes back to sometimes bite him.

9 Because -- and, again, that's what my
10 observation is in retrospect. When -- so let's say,
11 "Well, now we have litigation and there's various ways
12 -- it's an ambiguous enough where I can argue now that
13 it -- it's news and not entertainment." When you
14 utilize the entertainment aspects to try to market it
15 and make money from it -- and that's where I -- and,
16 again, I'm looking -- you're -- you say a lot of things
17 that are absolutely correct about the statute and --
18 and what constitutes news and then it gets spun into,
19 well this could be news.

20 But, again, I have to look at what O'Brien
21 intended when he wrote the book. And I know what he
22 says he intended, but the book in itself speaks for
23 itself. And we'll talk about what the book says about
24 what it is in a moment. But I -- I want to hear from
25 plaintiff's counsel.

1 MR. RESSLER: Thank you, Judge.

2 First of all --

3 THE COURT: And by the way, you keep seeing -
4 - citing People versus LeGrand, I'm not so sure that
5 that's the good law.

6 MR. CERESNEY: And yeah, it's certainly not,
7 Your Honor.

8 THE COURT: No, I -- and -- and I don't know
9 why you kept citing it. I'm looking at it and saying
10 this isn't -- really is not good law any longer.

11 MR. RESSLER: Well --

12 THE COURT: Well, I mean, I recognize there's
13 lots of nice dicta in there that helps you out, --

14 MR. RESSLER: Well --

15 THE COURT: -- but doesn't help the Court.

16 MR. RESSLER: Right. I mean, Judge, I -- I
17 mean, in terms of this divide between news and
18 entertainment, I think the New York legislature, like
19 the New Jersey legislature, for that matter, they drew
20 the line by omitting books from the specifically
21 enumerated kinds of media that are protected by the
22 shield law. And -- and that's precisely why they did
23 it.

24 The -- the statute is clear, again,
25 newspapers, magazines, press associations, wire

1 services, you know, the -- the kinds of media that
2 everyone traditionally views as news media. And then
3 if you go to paragraph D of the New York shield law, it
4 specifically says that there's protection for
5 journalists:

6 "Refusing or to failing to disclose any news
7 obtained or received in confidence or the identity of
8 the source of any such news coming into such person's
9 possession in the course of gathering or obtaining news
10 for publication or to be published" -- and here's the
11 point -- "in a newspaper, magazine or for broadcast by
12 a radio or T.V. station." Not in a book.

13 THE COURT: How come you didn't finish
14 reading the good stuff?

15 MR. RESSLER: Well --

16 THE COURT: Why don't you read the rest of
17 this stuff?

18 MR. RESSLER: Well, it says --

19 THE COURT: It's good.

20 MR. RESSLER: -- "public dissemination by any
21 other professional" -- that's fine, Judge -- "or any
22 other professional media or agency which has as one of
23 its main function a" --

24 THE COURT: Stop! "Has as one of its main
25 functions." Go ahead.

1 MR. RESSLER: "The dissemination of news" --
2 THE COURT: "To the public." You could stop
3 there. So the main function. What's a main function
4 in this book?
5 MR. RESSLER: It's not disseminating news.
6 THE COURT: Doesn't look like it to me
7 either.
8 MR. RESSLER: And that's why books are
9 omitted. Because publishers, that's not their job is
10 to disseminate news, their job is to publish books.
11 THE COURT: I mean, even if I get past to
12 say, well, it's -- it's -- you know, if there even were
13 news, the might -- the main function of this book is
14 not to disseminate news to the public. It certainly --
15 again, some of it is news in there. The -- the
16 relatively recent disclosure that his net worth has
17 been puffed greatly from 150 million to 250 million,
18 where Trump allegedly says it's 5 to 6 million is -- is
19 it wrong? Well, that's -- that's a public interest,
20 certainly.
21 But is the main function of this book the
22 dissemination of news to the public? Aside from the
23 fact that you're right, that both legislatures had the
24 ability to include books in their shield laws, but
25 didn't do it. Put -- easy to put that word in,

1 wouldn't have cost the legislature too much additional
2 to put that five-letter word, books or book -- four
3 letters -- in -- in there. But that's the problem,
4 it's not the main function -- this is not the
5 dissemination of news to the public. The dust cover, I
6 love dust covers:
7 "So step right up, ladies and gentlemen, to
8 the shocking, hilarious, riveting and completely true
9 story of America's favorite billionaire bad boy, bad
10 hair and all, from the massive egos of the New York
11 mayors he courted or defied, to the glamour queens he
12 loved and lost, to the talking dolls, colossal casinos,
13 personal Oz he created out of smoke and mirrors,
14 prepare to enter TrumpNation."
15 He says in the prologue, also known as smooth
16 operator. Page 9:
17 "So, but I think it might be interesting to
18 see what would happen if everybody in America struck it
19 rich. So this book's a field guide to TrumpNation.
20 It's a cookbook of sorts meant for all of those who
21 want to make it really, really, really big and become
22 really, very, very, very rich.
23 Each chapter will include challenging book --
24 Trump -- TrumpQuizzes that are secretese" -- this is
25 the tone that defense counsel was talking about -- "of

1 becoming a billionaire just like Donald. These quizzes
2 can't be found in any other Donald -- any of Donald's
3 books, that's because he knows that if you're able to
4 unlock the recipe behind all of his highly classified
5 but surefire money making strategies, soon there would
6 be no money left."

7 And then it goes on and talks about the
8 quizzes and where you send your quiz answers to. Oh,
9 that's -- it talks about the prize. It wasn't a dinner
10 with the author's mother, but rather "free passes to
11 the final season 12 of the Apprentice and a copy of How
12 to Get Rich signed by my mom." I knew that his mother
13 had something to do it.

14 So, I mean, it's -- it's being marketed as
15 entertainment and, although, it could include some news
16 in it, the main function I see of what this work is --
17 and I call it a work, what this work is, what the book
18 is, the main function is not the dissemination of the
19 news to the public, but the marketing of something that
20 is, in and of itself, has some public interest. Nobody
21 can sell a book if it -- there wasn't public interest,
22 but the main function was -- viewed in New York's laws,
23 it focuses on the totality of what we're dealing with
24 and not merely bits and pieces. It looks at the whole
25 and not the individual parts.

1 Aside from that, I don't really find that the
2 main function was the dissemination of the news. I
3 don't necessarily agree that this book is news. And we
4 know, in -- and counsel for the defense says to me,
5 "Judge, the tone of the book is what matters" and --
6 and talked about what I started kidding around about
7 this morning, but I did so with all the truth in the
8 world -- that Iverson -- Iverson's trade is certainly
9 not tantamount to whether or not we're gonna be getting
10 out of Iraq or what happened in Iraq yesterday.
11 Certainly we, on our own scales, figure out what's
12 important in the world from what's less important in
13 the world. Certainly, if you're a sports fan Iverson's
14 trade is important, but I'm no -- it pales by
15 comparison to what happens in a war zone.

16 When we deal with cases that we have -- I
17 mean, we all know that -- that the lines between news
18 and entertainment have -- have been blurred. I mean,
19 one only has to watch the Today Show today and compare
20 it to -- and, again, to the -- I do be -- I watch that,
21 in -- in the morning I get up -- the Today Show, back
22 in the times of Tom Brokaw and Barbara Walters to see
23 what's happened to the news. Because now we have
24 entertainment that's marketed as news. You have Extra
25 Extra and these other things that follow the network

1 news. You -- you look at the news stands, you look at
2 the National Enquirer and one of the other things you
3 do when you check out your groceries.

4 What's the news anymore? I mean, the -- the
5 distinction has become blurred. Because it's
6 entertaining to read some of these things, but are they
7 traditionally what the news was? Are they the
8 traditional reasons why the shield laws were put in
9 effect? Probably not, but that certainly can be
10 utilized by the -- the press to protect their sources.

11 But New York recognized that and New York I
12 think gives broad discretion to the Court. Queen
13 County court in -- in -- In re Sullivan talked about
14 the blurring of the news and entertainment and it says:

15 "Furthermore, in this age of participatory
16 journalism, where news commentary and sensationalism
17 have become one, the role of a journalist in the
18 public's mind has become so entangled that it is often
19 difficult to distinguish between news and
20 entertainment. Although the news-gathering privilege
21 is a fundamentally-protected right, it should not be
22 considered absolute or, for that matter, the unwritten
23 eleventh commandment."

24 And that's where we find this book, because
25 it does have some alleged factual information. I think

1 the defense says that it's not even a fact it's
2 somebody's opinion in there. I guess that may have
3 been part of your application to Judge Vina in the
4 past.

5 But it certainly does not, in the totality,
6 look to be news, it doesn't -- either doesn't meet the
7 definition that I see of news. And I think when we
8 look at In re Sullivan, it gives this Court broad
9 discretion, gives a court broad discretion to make that
10 determination, based upon total -- totality and, again,
11 based upon how it's marketed and what Mr. O'Brien said
12 about the work at the time the work was published.

13 (Pause)

14 THE COURT: I'm sorry. Anything else that
15 anybody else wants to add?

16 MR. RESSLER: I'd just like to add something,
17 Judge. Following up on what Your Honor just said about
18 what the intent was by O'Brien and how it was marketed.

19 Now, defendants gave us a bunch of documents
20 that didn't really bear on any issue in this case as
21 part of the document production, but we went through
22 thousands of documents and we did find some very
23 crucial emails that O'Brien himself wrote at the time
24 he was writing this book and at the time he was
25 marketing this book. And the notion that, as O'Brien

1 says in his declaration or affidavit he submitted, that
2 he viewed this as news, is absolutely not the case.

3 Because contemporaneously with his working on
4 this book and marketing this book, him, O'Brien, said
5 in no uncertain terms, this is not news. He said that
6 to numerous people as part of his promotional campaign.
7 There's one email he sends to Bob Wright, who is the
8 head of NBC, and he tells Bob Wright this book spoofs
9 Donald Trump. And in many respects, that's what it is,
10 it's a spoof of Donald Trump. You see the picture of
11 Trump on the cover. And it's like that on page after
12 page. And he specifically makes it clear that this
13 isn't news.

14 And another email he says to someone he's
15 trying to attract interest among T.V. programs in the
16 book, so they can invite O'Brien on as a guest. And he
17 says, look, this book, it's too ootray for the New York
18 Times. That's O'Brien's word, that's not -- that's not
19 my word. But I think ootray means it's too out there.
20 In other words, it's far afield from news, because it's
21 not news.

22 And another email -- and, again, these are
23 O'Brien's words. He says what I'm trying to do is --
24 is tap into Trump's mojo. You know, again, that's not
25 news, that's entertainment, it's gossipy, it's

1 sensationalist, and these are O'Brien's words.

2 Now, with respect to the promotional campaign
3 that Your Honor mentioned. It seems to us, how unfair
4 would it be, how wrong would it be to expand the shield
5 law to encompass books, when Tim O'Brien didn't only
6 publish a book, he went out around the country
7 marketing this book, he was on more than a dozen T.V. -
8 - I'm sorry, radio stations around the country, from
9 Wichita to California to New York, talking about this
10 book. He was on a bunch of T.V. shows talking about
11 this book. He went into a bunch of bookstores and gave
12 question and answer sessions and book signings talking
13 about this book. And at each stop along the way, as
14 part of this promotional campaign, he kept repeating
15 the defamatory statements, he kept taking shots at
16 Donald Trump saying that he wasn't close to being a
17 billionaire.

18 And now he's effectively saying, hey man, I'm
19 protected under the shield law, because I'm a reporter
20 for the New York Times. That would be, it seems to us,
21 a completely improper extension of the shield law,
22 which is supposed to encourage reporters to feel
23 confident and to feel protection when they actually
24 report on news.

25 And a final point, Judge, with respect to the

1 news factor and emboldening reporters to discharge
2 their obligations to report news, it relates to
3 anonymous sources. Now, as -- in addition to these
4 emails -- and we're happy to hand these up to Your
5 Honor, because we have -- we have sets of these emails
6 that I have been referring to -- we also looked at the
7 New York Times only policy with respect to the use of
8 anonymous sources. And it's right on the internet.

9 And -- and the Times, in the wake of these
10 Jayson Blair type scandals, Judith Miller type
11 scandals, and even before that was acutely aware and
12 sensitive to the issues created by reporters who use
13 anonymous sourcing when they shouldn't or use anonymous
14 sourcing in an improper way by failing to tell the
15 reader what the motives might be for the anonymous
16 source to say something about someone in the newspaper.
17 And this is from the New York Times' integrity manual
18 about the use of anonymous sources:

19 "Our policy on anonymous sources is a good
20 one and bears repeating. We resist granting anonymity
21 except as a re-last -- as a last resort."

22 And then it continues: "Some areas of
23 coverage notably involving national security,
24 intelligence or sensitive diplomacy and stories that
25 reflect dissent within governments, companies and other

1 institutions necessarily depend on the ability to
2 protect sources. The problem is, the credibility of
3 those necessarily anonymous sources and of our work is
4 undermined by the casual use of unnamed sources where
5 no such protection is called for."

6 Tim O'Brien's use of anonymous sources in
7 this TrumpNation book violates the New York Times
8 policy, which is further indication that this is not
9 news and that the anonymous sourcing here would never
10 have passed muster, not only under the Times' use of
11 anonymous sources and their policies governing
12 anonymous sources, but of most newspapers. And there's
13 no question, following the Times' directive as to when
14 anonymous sourcing should be used -- this isn't an
15 issue of national security, intelligence, sensitive
16 diplomacy or -- or a story that reflects dissent within
17 governments, companies and other institutions.

18 So, in every respect, Judge, the promotional
19 campaigning at issue here, the use of the anonymous
20 sources, the content of the book, most important, this
21 is not news and it's in a specific kind of media, a
22 book that's not even protected by the New York statute.

23 MR. CERESNEY: Your Honor, can I address some
24 of these points?

25 THE COURT: Yeah, absolutely.

1 MR. CERESNEY: I don't -- Let me start with
2 the last one. I don't know when this policy was
3 amended, I believe it was recently amended. But in any
4 event, you don't have to look at the policy, because
5 this did appear in the New York Times, Your Honor. In
6 2004, the same -- virtually the same identical
7 paragraph appeared in the Times. Of course, Mr. Trump
8 didn't bring suit then. One wonders how any damages
9 could flow from a later book on -- when it appeared in
10 the New York Times with a much larger circulation.

11 THE COURT: Well, that's an argument for
12 another day.

13 MR. CERESNEY: It is indeed. But in any
14 event, Your Honor, this clearly did not violate the New
15 York Times' policy at the time and I would submit it
16 still doesn't violate that policy, but -- and it's also
17 irrelevant to the resolution of this.

18 But back to the issue of the statute, Your
19 Honor. I heard what you said and I heard your view,
20 obviously, of the book, in general. But I think if you
21 -- the one thing I think that was missing from your
22 rendition of the statute is, you were talking about
23 what the main function of the book was. The statute,
24 though, doesn't say it has to be the main function, it
25 says one of the main functions is disseminating the

1 news to the public, one of. There could be multiple
2 functions. It could be -- it could also be somewhat
3 entertaining --

4 THE COURT: Well and I recognized that,
5 that's why I quoted In re Sullivan, I said the -- the --
6 -- everything has become blurred.

7 MR. CERESNEY: That's right. Everything --

8 THE COURT: And you have to look at it in its
9 totality when you're reading this in totality, again,
10 taking into consideration what the author says about
11 what the work is. That's why I said to you, when you
12 look at it in its totality, you look at some of the
13 historical perspective, his relationships with women,
14 what foods he eats, what medications he takes, his
15 various and sundry business dealing, the fact that he
16 likes the whole -- he has attachment to property. For
17 example, he doesn't like to get rid of -- to keep
18 thinking that I can get another dollar for it. Either
19 that or there is an emotional attachment, I'm not
20 really sure what O'Brien was trying to tell me in that
21 paragraph.

22 MR. CERESNEY: But those are all things of
23 interest to the public. He frankly got those things in
24 his own books, Your Honor. He writes about those very
25 things that he thinks the public is interested in and

1 they -- and they are. And, in fact, if you apply that
 2 standard to lots of other articles about celebrities --
 3 and in People magazine as a whole would probably not
 4 cover -- not be covered by the shield law, but we all I
 5 think would agree it is and it clearly is under New
 6 York law. Each and every thing you just mentioned, I
 7 think, itself is a matter of public interest, that's
 8 what it defines as news. It's not the tone --

9 THE COURT: But I didn't find that this was
 10 the main function of the book or one of the main
 11 functions. The main function of the book is defined by
 12 -- by the author and -- and I don't -- I won't even
 13 necessarily -- although O'Brien may have called it a
 14 spoof, I don't necessarily see it as a spoof, this is
 15 not the National Lampoon book here, but it's certainly
 16 --

17 MR. CERESNEY: I mean, and the statute
 18 clearly covers --

19 THE COURT: It deals with each -- other than
 20 the dissemination of news in the traditional sense,
 21 when we look a historical perspective of -- of where
 22 the privilege came from and how it came to be.

23 MR. CERESNEY: I understand that would be the
 24 historical perspective, Your Honor, but the '81
 25 amendment I think changed that perspective completely.

1 And Your Honor recog --

2 THE COURT: I still think we have to look --
 3 again, my decision is not based upon the history of how
 4 this shield law arose, but recognition that, certainly,
 5 this is not traditional application, certainly
 6 plaintiff's counsel is well-founded in saying books --
 7 books could have easily have been included not only in
 8 New Jersey's law, but in New York's law. But, again,
 9 my view of what, overall, where In re Sullivan says to
 10 me look at the book, basically, look at it in its
 11 totality, everything gets mixed up and you make a
 12 decision based upon the totality of the evidence of
 13 what it is. And I don't think that one of the main
 14 functions is the dissemination of news.

15 MR. CERESNEY: It -- Your Honor, I would beg
 16 to differ that that's what -- that's what --

17 THE COURT: I know that and maybe an
 18 Appellate Court'll -- will agree with ya.

19 MR. CERESNEY: You know, and I think here,
 20 particularly here, when we're talking about a book
 21 which is a direct extension of reporting for the Times
 22 -- if we were talking about, Your Honor, some book that
 23 had nothing to do with earlier reporting, did not --

24 THE COURT: He didn't have any guarantees
 25 when he wrote this book that it was gonna be published

1 at all, accepted for publication. He didn't have any
2 guarantees by the New York Times that they were gonna
3 be involved, that Time Warner was gonna be involved, --

4 MR. CERESNEY: Well, he had --

5 THE COURT: -- right?

6 MR. CERESNEY: He had a book contract, Your
7 Honor. He had a --

8 THE COURT: Well, he had a -- but he -- but
9 at the time he wrote it?

10 MR. CERESNEY: Yeah.

11 THE COURT: Okay.

12 MR. CERESNEY: He already had a signed book
13 contract, Your Honor. And it -- and he -- and he had
14 been, you know, -- I mean, there's obviously provisions
15 in there about you're gonna provide the book by X date
16 and that it'll be published, assuming it meets certain
17 minimal criteria. So, I mean, he had a -- he had an
18 indication it would be published. He didn't have an
19 indication it will be excerpted in the Times, but then
20 it was. And that -- you know, it -- I just worry that
21 we're losing here, Your Honor, the forest from the
22 trees here. You read the prologue a number of times
23 and --

24 THE COURT: No, I -- I -- I read that because
25 -- I could find you other sections, I'll be glad to go

1 through it.

2 MR. CERESNEY: But all those are tone issues,
3 Your Honor, I think.

4 THE COURT: You're right. The tone issues --
5 but the tone sets what the book is. You can't say I
6 speak in this tone and I'm not sarcastic!

7 MR. CERESNEY: But sarcasm doesn't take it
8 out of the First Amendment context, it doesn't take it
9 out of the shield statute. You can report on news with
10 sarcasm --

11 THE COURT: But it tells you --

12 MR. CERESNEY: -- a newscaster --

13 THE COURT: -- what it is -- what appeal is
14 it having? Where is -- what -- what audience is it
15 directing itself to?

16 MR. CERESNEY: The public.

17 THE COURT: What is it that draws interest in
18 the book?

19 MR. CERESNEY: The public.

20 THE COURT: Is -- is it really the news?

21 MR. CERESNEY: Yes.

22 THE COURT: Not really.

23 MR. CERESNEY: It's the Trump-sized
24 revelations.

25 THE COURT: It's the People aspect, the

1 People magazine aspect of the case of -- of the
2 publication that draws. It's -- oh, yes, it's in
3 public interest because people like to hear about that
4 stuff.

5 MR. CERESNEY: That's correct.

6 THE COURT: Gossip is a public interest.

7 MR. CERESNEY: National Enquirer.

8 THE COURT: I -- I -- there's very little out
9 there that's worth buying or looking at that doesn't
10 have some public interest. But does that make
11 everything -- does that give everything a protection?
12 I don't think so.

13 MR. CERESNEY: It gives -- it gives
14 everything that could be possibly characterized as a
15 matter of public interest protection, Your Honor. I
16 think that that --

17 THE COURT: Well, that's --

18 MR. CERESNEY: -- was the intent --

19 THE COURT: -- really overly broad and I
20 think it goes -- applies against the case of -- of what
21 the statute is written for. But go ahead, I'm -- I'm --
22 -- that's one of its main functions, it goes to that --
23 that's why I made for the plaintiff complete reading
24 the -- the --

25 MR. CERESNEY: That's right.

1 THE COURT: -- strike that, because that's
2 what I focused on that and the definition of news when
3 I looked at In re Sullivan.

4 MR. CERESNEY: Well, but what I focus on in
5 this book, Your Honor, is it's not somebody who went
6 out and just sat down at their computer and just wrote
7 a work of fiction or wrote a work of -- just -- just
8 off the top of their head. He interviewed many, many
9 sources --

10 THE COURT: Oh, sure, he took --

11 MR. CERESNEY: -- and there are revelations
12 in this book about Mr. Trump, which you, you know, I
13 think have recognized, there are revelations about his
14 business activities in the past, there are revelations
15 that come from interviews of him personally.

16 THE COURT: Mm-hmm.

17 MR. CERESNEY: And, in fact, those were done
18 specifically for this book. People might read this
19 just to hear what Donald Trump has to say about a
20 number of different things and that's a matter of
21 public interest. The fact that it's presented in a
22 tone that is sarcastic in some aspects of it does not
23 take away from the fact that one of its main functions
24 is to disseminate news, to disseminate issues of public
25 -- matters of public interest. And there are many in

1 here.

2 And, specifically, the allegedly libelous
3 claim, which appears on page 154 -- and that really, I
4 think, should be the only thing we're talking about --
5 but, in any event, Your Honor obviously disagrees with
6 me on that -- but that appears identically,
7 essentially, in the New York Times a year earlier and,
8 in fact, it appeared, as Your Honor indicated, in many,
9 many prominent publications.

10 I just am concerned, Your Honor, that in this
11 situation where you have a sarcastic tone in the book,
12 the Court is taking it upon itself to determine what is
13 news to the public and what is not. I think it's clear
14 that, broadly speaking, this -- these are issues of
15 public interest, the public is interested in these
16 issues. The book did not sell very well, but that
17 inevitably may -- that may go to damages, but it does
18 show that there was at least some interest in it and it
19 did -- it was bought some people.

20 And ultimately, Your Honor, I think we all
21 would agree that these are things, while you -- you and
22 I might not be interested in them very much, there are
23 many who are. And that's why magazines like the
24 National Enquirer exists, that's why People exists.
25 But even beyond that, that's why Business Week exists.

1 and those are the types of things that are also
2 discussed in this. Like the transactions he engaged
3 in, like the debt on certain of his properties. Some
4 of those things are -- are talked about in there.
5 Specific aspects of purchases and sales of properties,
6 transactions he dealt with over time. The fact that he
7 had dealings with the -- with the mon -- with some
8 potentially allegedly people affiliated with the mafia
9 early in his career.

10 I mean, all of these things are things that
11 come out in this book and that are revealed in this
12 book and that ultimately are matters of public
13 interest. And so, I think even under New York law,
14 you're dealing with issues of public interest and those
15 -- I don't see how you can read them out of this -- of
16 the statute.

17 THE COURT: Any response?

18 MR. RESSLER: No, Judge.

19 THE COURT: All right. As I indicated, first
20 of all, I've made a finding that plaintiff's counsel is
21 correct, the statute could have easily included the
22 word books. I've already made a determination and I
23 appreciate counsel's arguments, they really make me
24 think there's still a question -- I never come out here
25 with a predetermination, I listen carefully to what's

1 said.

2 I took an enormous amount of time to read
3 through the book, like, a couple times and -- to try to
4 figure out exactly what it was and recognize it for
5 what -- it -- it certainly -- as I said to you before,
6 anything worthy of -- of marketing or buying has to
7 have some public interest in it, but that in and of
8 itself doesn't make it news. So, containing factual
9 information, be it historical or of recent events,
10 certainly does not, in and of itself, if it's included
11 in the book, make it news.

12 What's one of the main functions? And as I
13 said, and In re Sullivan seemed to -- to be consistent
14 with what I felt, that -- that everything got -- gets
15 blurred lots of times, things get blurred in this day
16 and age when you have a book like this. It contain --
17 contains facts, contains newsworthy -- what would
18 ordinarily be newsworthy information, if published in a
19 newspaper, which some of it has been and there's plenty
20 of article -- newspaper articles that are referred to.
21 There -- again, looking in its totality, I don't find
22 that its main function is the dissemination of news,
23 nor do I find it to be news in the sense as defined by
24 New York law.

25 As I said, in its totality, not only based

1 upon what I read, what I saw, the tone of the book, to
2 some degree you're right, has -- has a bearing on it,
3 but the tone was put in the book by the author and the
4 author was attempting to market it as entertainment
5 more so than it was news. And I'm looking at his own
6 spin, what I perceive to be a spin on the book, from
7 what he wrote in the book. A lot of what I'm deciding
8 today is based upon what the author did and didn't do,
9 what the author said and didn't say.

10 Accordingly, I do find it to be news, but I -
11 - I want to, again, make another point so as a result -
12 - not news, rather, it is not news. It is not subject
13 to the shield law. Accordingly, based upon that
14 analysis, the shield law cannot be utilized to prevent
15 the discovery.

16 However, I still want to make an additional
17 finding and I want to go back to page 154 and go back
18 to the argument I was having with defense counsel. And
19 I say, even if a reviewing court says, "Well, Judge,
20 you know, you're all wet; that was, in fact, news.
21 You're wrong." I look at what was not said on page
22 154, going back to the argument. I invite you to argue
23 with me about it.

24 That glaring omission, the failure to
25 identify these three sources as anonymous sources --

1 and I know what you said, I heard you say it -- or
 2 confidential sources, when this author has gone to
 3 great lengths to articulate in his footnotes or in the
 4 body of the text, who is and who is not one that would
 5 be a confidential source, I reach the conclusion that
 6 those sources on 154, even if this were news, are non-
 7 confidential sources. That, in the alternative, if a
 8 court disagreed with me, the -- and the reviewing court
 9 disagrees with me, I then look at that. Again, I'm
 10 relying upon what O'Brien said or didn't say in regard
 11 to those three sources.

12 Is there anything else that you want to add
 13 to me, because I know that you -- we got into that
 14 discussion a little bit earlier than I had anticipated,
 15 but it's an interesting discussion. And I'm trying to
 16 ascertain why these people -- and you gave me some
 17 views, say, "Well, Judge, the law does not require you
 18 to footnote it, italicize it, identify it," but you
 19 have to look at the intent of the parties. And all I
 20 have to look at the intent of the parties is the
 21 evidence that I have before me. And the evidence is
 22 indicative that there's an omission of this nature,
 23 that the author did not consider that to be a
 24 confidential or anonymous source.

25 No, I -- I can't be left with any other

1 conclusion, because I -- again, I went through it, I
 2 read through the paragraphs -- that chapter 6,
 3 unfortunately, I must have read about six times to try
 4 to figure out if I could throw any reasonable inference
 5 of -- of confidentiality expectation, other than the
 6 fact that these individuals were not named. I mean,
 7 that -- that gives me some idea.

8 MR. CERESNEY: Right. Well, Your Honor, I
 9 think -- I tend to think of two things. First, I don't
 10 think that there's any dispute of fact on this now.
 11 And if you wanted to hold a hearing, you obvious --

12 THE COURT: Well, plaintiff's -- wait! He
 13 jumped on the bandwagon. Plaintiff's counsel is
 14 shaking his head yeah.

15 MR. CERESNEY: Well, I don't know how he had
 16 a basis to dispute that. The point is, there's a sworn
 17 affidavit certification from Mr. O'Brien saying that
 18 these three sources have requested confidentiality and
 19 fear retribution. That's what's in the record on this.
 20 You are pointing to an omission in the book, from which
 21 there is a reason and we can put in the affirm -- the
 22 certification of Mr. O'Brien which gives that reason.
 23 But I don't think there's any basis at all to doubt
 24 that under the statute these people, this information,
 25 this news -- and I would emphasize this is a matter of

1 public interest -- this news was obtained or received
2 in confidence.

3 "Or the identity of the source of any such
4 news coming in such" -- that -- because these -- the
5 identity of the source and this -- not the news, but
6 the identity of the source was received in confidence.
7 And the point being, the omission from the book of a
8 footnote cannot be what this statute turns on, it must
9 -- what -- what you're effectively importing into this
10 is a requirement that when a writer specifically wants
11 something protected by this particular aspect in the
12 statute, that writer has to specifically say that this
13 particular source has requested anonymity for the
14 following reasons and here's why. And that is nowhere
15 in the statute and would impose a great burden. What
16 about -- what about a newscaster? Does a newscaster,
17 when the newscaster says -- does he have to footnote
18 what he says in the news -- in -- in the news report?
19 No. I mean, absolutely not. Newspapers don't have
20 footnotes, Your Honor.

21 The point is that there is no dispute that
22 these people have asked for confidentiality, that is --
23 there's a certification to that effect, we can -- if
24 Your Honor wants to hear testimony on it, obviously
25 that's possible. I don't -- I don't see any reason for

1 that. And the point is, just simply having -- not
2 having a footnote doesn't take it out of the scope of
3 the statute. I don't -- and I don't see how it could
4 be read --

5 THE COURT: No, I just recon -- I'm just
6 pointing out to you what I -- what was glaring to me.

7 MR. CERESNEY: And I understand that, Judge,
8 and --

9 THE COURT: And -- and, again, you're talking
10 about an author who was enormously careful in -- in
11 making sure he identified people where there was
12 confidentiality or anonymity expected from anyone. And
13 -- and, again, I --

14 MR. CERESNEY: But we can put in the
15 certification as to the reason, Your Honor, if that
16 would help. I mean, I -- I've made a proffer that --

17 THE COURT: No, I'm just telling you that
18 that's not -- that's not the basis for my
19 determination, I already told you the basis for my
20 determination. I'm just making arg -- I -- I was
21 talking about an alternate finding, because I have a
22 situation where, despite the fact that I do have a
23 certification, it would appear, based upon what I read
24 and what I didn't read, that -- that these individuals
25 had not been identified as confidential sources.

1 Now, I know that you have a certification you
2 have provided me with.

3 MR. CERESNEY: Yeah. Now --

4 THE COURT: But I'm -- I'm concerned about
5 the veracity of it, in light of what was written and
6 what wasn't written in this book. That's what my
7 concern was. And if it was -- certainly, if it's a
8 non-confidential source, when you talk about the
9 constitutional test or the test for non-confidential
10 sources, the -- there's no doubt in my mind that if
11 these people were not considered to be confidential
12 sources, that certainly the -- the information is
13 highly material and relevant, because this is the
14 gravamen of the cause of action.

15 We know that Donald Trump's a public figure,
16 which has to prove clearly and convincingly actual
17 malice, a huge burden that he's gonna have to overcome
18 to be able to prevail in this case. This is critical
19 and necessary to maintenance of his claim? Absolutely.
20 And is it obtainable from some alternate source? I
21 don't think that there is any alternate sources, but --

22 MR. CERESNEY: Although he hasn't tried yet,
23 Your Honor, obviously. He hasn't deposed anybody,
24 including any -- my understanding is he -- he thinks he
25 knows who they are, so he hasn't tried to depose

1 anybody, though. I mean, and that -- that clearly is
2 not worked up and I think one of the courts, Judge -- a
3 decision -- and he hasn't worked up a sweat, so to
4 speak.

5 But going back, Your Honor, to -- to one
6 thing that you said. And I -- I think ultimately here
7 what we're talking about is -- and I know what you said
8 about the veracity of Mr. O'Brien, I just don't see any
9 basis for doubting that. We didn't put in the
10 certification the reason why it wasn't footnoted, that
11 wasn't an issue that was certainly briefed at all by --
12 by plaintiff's counsel and not something that was
13 raised as an issue. If that concerns Your Honor, we
14 could certainly put in the certification on that. But
15 I think, ultimately, that the certification that you
16 have, which is under oath and there's no basis to -- to
17 deny that.

18 I mean, I guess -- I guess I'm just wondering
19 why it would be that Mr. O'Brien, at the time of the
20 publication, would -- would put in a paragraph talking
21 about three sources and not identify them if they
22 didn't ask for conf -- confidentiality. I mean, he did
23 identify all other sources who did not request such
24 confidentiality through footnotes. And we've
25 identified those in our privilege log and we've made

1 those clear. I think -- you know, I -- I just don't
 2 think your point about how careful he was, actually I
 3 think supports this notion. Because he made a specific
 4 determination not to include that for a specific
 5 reason.

6 The other question I have for Your Honor is --
 7 -- is, obviously, I understand Your Honor's ruling on
 8 this.

9 THE COURT: I'm not done, I want to just hear
 10 from them about the one issue and then we'll --

11 MR. CERESNEY: Okay.

12 THE COURT: -- you could ask me for
 13 clarification. Go ahead.

14 MR. CERESNEY: Yeah.

15 THE COURT: Anything you'd like to say about
 16 that?

17 MR. RESSLER: No, Judge. I mean, I think
 18 Your Honor's point is well-taken. I opened up to
 19 thought -- footnotes on page 254, "author interviewed
 20 confidential source" is reference in footnote 44 --

21 THE COURT: Oh, just -- and just looking at
 22 it, I said that's so -- I mean, there just is something
 23 that was glaring to me as I run through the -- the
 24 entire book a couple times. And why didn't he just
 25 simply say these people wanted anonymity, could have

1 put one word in there. Not three anonymous sources.
 2 Didn't even mention it, but. All right. Well, my
 3 ruling is not based upon that, but I'm just making that
 4 observations.

5 Go ahead, what did you want to ask me for
 6 clarification?

7 By the way, I wanted to make one other point
 8 before you ask me for clarification. There's another
 9 difference between New York and New Jersey law. New
 10 York law does not protect the editorial process and,
 11 accordingly, is gonna be -- there's some discovery
 12 requests. And we look at Green Law Associates versus
 13 New York Post, it was a 1980 case. It's not protected
 14 by the shield statute. It wouldn't be in any event,
 15 based upon my determinations today, but I just wanted
 16 to make that clear as well.

17 But what -- what do you need for
 18 clarification?

19 MR. CERESNEY: Yes, Your Honor. Obviously,
 20 as you indicated, we do intend, obviously, to seek
 21 appellate review of this decision, which I think --

22 THE COURT: Yeah, I know you're gonna.

23 MR. CERESNEY: -- you invited.

24 THE COURT: And I don't -- well, listen. I'm
 25 not -- I'm never offended by that, I would -- I would

1 hope that you would. I want to make sure I got it
2 right.
3 MR. CERESNEY: Okay. And I guess there's two
4 issues on that. One is, I wondered whether Your Honor
5 was intending to make an alternative finding, if New
6 Jersey law applied, in which case we could, in theory,
7 raise that issue on appeal as well, because I do think
8 that the choice of law issue, if New Jersey law does
9 apply in this case, I do think that there is --
10 THE COURT: You win if New Jersey law
11 applies.
12 MR. CERESNEY: Yes.
13 THE COURT: And there's no doubt about it and
14 --
15 MR. CERESNEY: That's correct. Although, I
16 think we win --
17 THE COURT: -- the New Jersey law is so
18 strict, despite the fact that may even consider this to
19 be part entertainment, part news, I think the fact that
20 it's -- it's -- it is, in fact, part news, I think
21 that's enough to save the day, because New Jersey's law
22 is written so strictly, I couldn't -- it -- I can't
23 make a finding that's consistent with new -- the
24 finding under New York law. There's no doubt about it.
25 That's why it's so important to make the

1 threshold determinations as to conflict, as to the
2 applicability of New York law. I don't want to back
3 into the decision, I'm just saying that's ultimately
4 where I came to and I looked at -- I -- I did analyze
5 it from both perspectives.
6 MR. CERESNEY: And I figured that. I
7 appreciate you making that finding.
8 THE COURT: There's no question about it. I
9 mean, New York -- New Jersey law would prevent the
10 disclosure of the confidential sources or alleged
11 confidential sources.
12 MR. CERESNEY: And just to be clear. I think
13 our view is in light of that, which I agree with,
14 obviously completely, the choice of law analysis would
15 require the application of New Jersey law, since I
16 think to admit that evidence before a jury here in New
17 Jersey, would violate the public policy of the state
18 under Maressa and under the statute. I know you've
19 ruled to the contrary, --
20 THE COURT: I know it --
21 MR. CERESNEY: -- but I want to just --
22 THE COURT: Look, I know what your position
23 was.
24 MR. CERESNEY: I want to make our record on
25 that.

1 THE COURT: And I appreciate that.
2 MR. CERESNEY: And second, I would ask that
3 Your Honor stay this order pending our -- the appellate
4 review, to allow us to seek review.
5 THE COURT: Well, you have to have an order
6 signed in order to take the appellate review, but stay
7 the execution of the order.
8 MR. CERESNEY: Stay the execution.
9 THE COURT: So, certainly, I'll stay the
10 requirement that you have to -- you're compelled to
11 give that discovery until you've had an opportunity to
12 present the application for interlocutory review. And
13 I -- I suggest that they probably may take it, because
14 it's a --
15 MR. CERESNEY: Until they --
16 THE COURT: It has a constitutional dimension
17 to it. By the way, the findings that I made with
18 respect to the non-confidential source would also apply
19 with respect to constitutional aspects of the -- of the
20 law. So if we're looking at it from a constitutional
21 perspective, based upon what I said about the -- the
22 necessity for the information -- I know you made a
23 point of saying, "Well, he hasn't really tried to find
24 an alternate source," I still find that -- that
25 constitutional shield would not prevent -- that's

1 qualified privilege in this particular instance --
2 would not prevent a disclosure.
3 MR. CERESNEY: Okay.
4 THE COURT: Is there anything else further
5 from counsel?
6 MR. CERESNEY: One other thing on that --
7 THE COURT: Yeah.
8 MR. CERESNEY: -- one last point.
9 THE COURT: Sure.
10 MR. CERESNEY: Just to clarify. On the
11 qualified privilege, because I know Your Honor wants to
12 make the complete findings here. I know you -- on the
13 qualified privilege, if it applies -- I'm sorry, Your
14 Honor --
15 THE COURT: That's okay.
16 MR. CERESNEY: On the --
17 THE COURT: You're right, I do.
18 MR. CERESNEY: On the qualified privilege, if
19 it applies, I think you've ruled that the confidential
20 -- quote, confidential sources, the page 154 sources,
21 would be critical material and exhaust -- and that
22 they've exhausted. I know you've ruled on that.
23 There's just another aspect to it. I know you've also
24 ruled editorial processes are not protected by the
25 qualified --

1 THE COURT: Correct.
2 MR. CERESNEY: -- privilege. I understand
3 that. There's sort of a -- a middle --
4 THE COURT: And by the way, they would be
5 under New Jersey law as well.
6 MR. CERESNEY: That's right. And so but then
7 there's a middle ground of non-confidential sources,
8 that is things that we -- you know, are cited in the
9 book in the footnotes or for which, you know, didn't
10 request anonymity, interview notes and other things
11 related to those sources. Our view is that's actually
12 different from the confidential -- confidential
13 sources, because he knows who those sources are and can
14 seek the information that those sources provided from
15 other sources. And so we don't believe he's exhausted
16 or that those are critical, that category, that is the
17 non-confidential source, the documents that relate to
18 that non-confidential source informations and drafts,
19 those types of things we just don't think would -- it
20 would apply to.
21 And I think, Your Honor, I -- I assume would
22 have to make further findings on each of those
23 documents to determine whether, in fact, there's been
24 criticality or exhaustion or materiality.
25 MR. RESSLER: Judge, I don't think that's

1 accurate, I think -- I think to the extent that counsel
2 is suggesting the editorial process is protected, I
3 don't think that's the case.
4 THE COURT: Editorial process is not
5 protected.
6 MR. RESSLER: It's not protected. So that --
7 MR. CERESNEY: I'm not referring to -- just
8 to clarify. I'm referring to interview notes, with
9 interviews with non-confidential sources.
10 MR. RESSLER: No, the -- no. No, those --
11 those should be produced, based on Your Honor's ruling
12 under New York law.
13 THE COURT: Yeah, that's -- I -- I expected
14 those to be produced. Yeah.
15 MR. CERESNEY: Those aren't editorial
16 processes, Your Honor, those are when you're actual --
17 I mean, I think -- as I understand editorial process --
18 I mean, it may be -- I -- a misunderstanding, but I
19 think editorial process is communications between the
20 writer and the editor about decisions about how to edit
21 -- edit to the --
22 THE COURT: Your internal works of -- of Mr.
23 O'Brien.
24 MR. CERESNEY: Right. But I think -- no, I -
25 - no, I think it's -- it's drafts of the book, edits to

1 the drafts of the book. Whereas, as I understand it,
2 interview notes --

3 THE COURT: Going between the author, his
4 agent and the --

5 MR. CERESNEY: Editor.

6 THE COURT: Yeah.

7 MR. CERESNEY: Right. I think this is a
8 different category. This is the author interviewing a
9 non-confidential source, taking notes on that
10 interview. That's a separate category, that's not
11 editorial process, Your Honor, that's the interview --
12 that's -- that's information obtained from the -- the
13 non-confidential source and then memorialized in
14 interview notes. That's different --

15 THE COURT: Right.

16 MR. CERESNEY: -- as I understand it, under
17 the statute, that would fall into C in this. In other
18 words, an editorial processes is not covered, I think
19 you've ruled, at all by the statute. In the New York
20 statute, subsection C covers non-confidential
21 information. I would argue that's non-confidential
22 information. And I guess the point I'm making is, he
23 is --

24 THE COURT: It is not confidential, there's
25 no doubt about it.

1 MR. CERESNEY: Right.

2 THE COURT: Nobody disputes that.

3 MR. CERESNEY: And he needs to overcome the
4 qualified privilege as to each of those documents and
5 he needs to show materiality, criticality and
6 exhaustion. And I understand what you're saying about
7 the confidential sources, and I disagree on that,
8 obviously, but --

9 THE COURT: I know.

10 MR. CERESNEY: -- the non-confidential
11 sources, I think he knows their identity and can go to
12 them and ask them what they told Mr. O'Brien. He
13 doesn't need our notes for that. And it's certainly
14 crit -- he hasn't shown it's critical to his case,
15 particularly the --

16 THE COURT: Let me ask you a question. I
17 could interview you and you could give me an interview
18 and I take down the information and put my own spin on
19 it. And you get conflicting information. He deposes
20 you and then he gets my notes and your deposition is in
21 conflict with my notes. You don't think that's
22 material?

23 MR. CERESNEY: Well, we would have to see
24 when it -- what happens in the deposition first. You
25 wouldn't know that until he said it. If he -- if at

1 the deposition he says something, you know, completely
2 --
3 THE COURT: It wouldn't matter, he can't --
4 MR. CERESNEY: -- consistent.
5 THE COURT: -- there's no template to -- even
6 if it's consistent.
7 MR. CERESNEY: Well, but he has to try to --
8 THE COURT: He still has the right to the
9 information.
10 MR. CERESNEY: But he hasn't even said he's
11 gonna depose these people. In other words, you're
12 hypothesizing things --
13 THE COURT: I'm -- I'm just -- I'm trying to
14 put a real-life example on what we're talking about
15 here.
16 MR. CERESNEY: And if -- if we were to use
17 that example --
18 THE COURT: Say, you want his -- he wants
19 O'Brien's notes about an interview with a non-
20 confidential source.
21 MR. CERESNEY: Right.
22 THE COURT: And you're saying, Judge, I still
23 want to -- I -- I still want there to be a protective
24 order and can't get it.
25 MR. CERESNEY: Right. And I'm saying that.

1 the reason --
2 THE COURT: Without showing that he's had an
3 opportunity to first talk to the person that was
4 interviewed.
5 MR. CERESNEY: Exactly. And certainly with
6 regard to interviews that don't relate to net worth.
7 They have nothing to do with anything in this case.
8 MR. RESSLER: Judge, I'm not --
9 MR. CERESNEY: And my -- my -- I'd like to
10 finish. My -- my point is just, there's a specific --
11 THE COURT: Now you've raised another issue.
12 Is it relevant to this particular inquiry? The answer
13 is, well, listen, if it doesn't talk about net worth,
14 the gravamen of the complaint is what's the net worth,
15 certainly it's not relevant, so on -- on those grounds,
16 under 401 it would be --
17 MR. CERESNEY: Right.
18 THE COURT: I'm not applying the Rules of
19 Evidence of New York, I'm using New Jersey.
20 MR. CERESNEY: And all I'm trying to say is,
21 these are nuance determinations. You don't have to
22 make these decisions today, I guess is what I'm saying.
23 All I guess we -- we want Your Honor to do is to focus
24 on the fact that you're not making that -- that
25 category of decisions today. You're saying

1 confidential --

2 THE COURT: I'll be glad to give you some
3 direction. I'm saying to you, if it's not relevant,
4 the likelihood of me allowing the discovery is limited.

5 MR. CERESNEY: Okay.

6 THE COURT: If it is relevant to net worth,
7 if it's an interview with somebody not a confidential
8 source that deals with the worth of an individual, the
9 likelihood is I'm gonna make you produce those notes of
10 Mr. O'Brien, because not only will Mr. O'Brien's notes
11 and the correctness of those notes be in question, also
12 whether or not there's an inconsistency from what was
13 said and what was written as to whether or not actual
14 malice took place, whether or not he was re -- he -- he
15 published in reckless disregard to the truth.

16 And the reckless disregard may be provable by
17 obtaining the notes of what was said and by comparison
18 of what those -- what the interviewee stated to Mr.
19 O'Brien. So, he -- the interviewee says, "I think that
20 that's what his net worth is, I'm not really sure."
21 And then O'Brien writes his net worth is so and so, he
22 writes it as a fact when -- when the interviewee was --
23 was hedging, for example. Again, I don't know what
24 transpired, so you -- you're right in some instances
25 and -- and you're not so right.

1 MR. CERESNEY: Right.

2 THE COURT: I'm just trying to give you
3 guidance so I don't have to deal with -- and it --

4 MR. CERESNEY: It -- and I think that's all
5 we --

6 THE COURT: My ruling will be relatively
7 consistent with that; but, again, I remain open to the
8 arguments, if you show me that --

9 MR. RESSLER: Judge, I -- I --

10 THE COURT: -- wait a second -- it's not
11 relevant or it's --

12 MR. RESSLER: I certainly hope and we're
13 certainly gonna try to work these kinds of issues out,
14 based on Your Honor's ruling. It seems clear to me
15 and, obviously, if Tim O'Brien has notes of an
16 interviewee that deal with our claim, then obviously
17 those are notes that we're gonna want. So when we
18 depose Tim O'Brien, we're gonna say, "It's funny that
19 you wrote XYZ in your book, but that's not what the
20 notes reflect." I mean -- and I think Your Honor was --
21 -- was driving to that point. But, you know, hopefully
22 we'll be able to work some of this out.

23 The only other point I wanted to mention --

24 THE COURT: Well, I hope you meet and confer
25 about that stuff, I mean --

1 MR. RESSLER: There's no question about it.
2 THE COURT: But I'm just trying to give you
3 guidance as to where I'm likely to go at that time and
4 --
5 MR. RESSLER: No, and that's not -- and
6 that's --
7 THE COURT: I don't like to prejudge
8 anything, but I'm gonna try to give you some guidance,
9 because I don't want to micro-manage this case, I've
10 got enough cases I micro-manage.
11 MR. RESSLER: No, we appreciate that.
12 THE COURT: Some from Mr. Tambussi's firm.
13 MR. RESSLER: The guidance is helpful and
14 hopefully is gonna shorten meeting for sessions.
15 I just want to make one final point. And
16 that is, Your Honor's comments and counsel's comments
17 with respect to how this would unfold under New Jersey
18 law. Obviously, as we state in our papers, we view the
19 result being the same. We think that --
20 THE COURT: I know you do.
21 MR. RESSLER: We think that these sources
22 would have to be disclosed under New Jersey shield law,
23 that New Jersey shield law doesn't apply, because only
24 books are covered. There are various other arguments
25 that I could make now. I don't think it's necessary to

1 do so, based on Your Honor's ruling. We make them in
2 our papers. I could expand upon them.
3 But I -- I just wanted the record to be clear
4 that, obviously, from Trump's perspective we believe
5 that the New Jersey shield law would -- would
6 absolutely apply here and that the rationale that the
7 Supreme Court of this state used in Maressa, where it
8 emphatically endorsed the shield law, wouldn't apply
9 here at all. That -- that to apply that rationale here
10 would really make a mockery of what the Supreme Court
11 was talking about in Maressa, for a variety of reasons,
12 including the fact that the Maressa court was really
13 focused on the pressure of deadlines, that reporters in
14 those seven specifically-enumerated news media operate
15 under, that doesn't apply here at all. O'Brien had all
16 the time in the world to write this book and -- and
17 verify the statements that we claim are defamatory
18 about what Trump's net worth is.
19 I could go on, but I don't think I need to,
20 Judge. I just wanted to make that clear for the
21 record.
22 THE COURT: No, I see one -- I did look very
23 carefully at the New Jersey law, because I did
24 recognize that that would be the subject in the event I
25 did find that New York law did apply, that certainly

1 you'd like me to make the record clear and complete.
 2 And I even looked at the fact that, well, O'Brien
 3 wasn't really as an employee of the New York Times when
 4 he did this, he was -- well, we'll call it a freelance.
 5 When I looked at that, even to try to see if he would
 6 fall outside the shield law, well even that satisfied
 7 me that that would be covered as well.

8 I looked at a number of cases and the
 9 conclusion I came to is if New Jersey law applied in
 10 this particular instance, there would no -- be no doubt
 11 in my mind the shield law would apply. And the
 12 editorial process would likewise be protected. So,
 13 does that help you?

14 MR. CERESNEY: Yes. It does, Your Honor.

15 THE COURT: It helps him. And note that the
 16 Appellate Court, when they review this, should look at
 17 the -- the papers that plaintiff has filed with respect
 18 to the applicability and their argument that the
 19 outcome would have been the same.

20 MR. RESSLER: Yeah and we based it primarily
 21 on the fact that when -- when the statute requires
 22 somebody to be a professional journalist, they have to
 23 be a professional journalist for the part --

24 THE COURT: Well, that's the New York statute
 25 that used professional journalist. We don't have that

1 same law here in New Jersey.

2 MR. RESSLER: The -- good point, Judge. The
 3 -- the New Jersey statute requires that some --

4 THE COURT: Someone connected to -- I mean --

5 MR. RESSLER: That somebody be employed by --
 6 one -- one of the specific news media. So what O'Brien
 7 is basic -

8 THE COURT: Yeah, but In re Knapp, by the
 9 way, that person wasn't employed by the news media, it
 10 was like a --

11 (Tape change malfunction)

12 MR. RESSLER: Under -- under the defendants'
 13 theory, so long as they're employed by one of the
 14 enumerated kinds of news media, you could go out and
 15 write a book and gain protection of the shield law.
 16 That means I could be a photo editor at a golf magazine
 17 or a porno magazine or a professional wrestling
 18 magazine, go out and write a book about a public
 19 figure, rely on anonymous sources and then, when I'm
 20 sued, say, "I don't have to reveal my sources, because
 21 I'm protected by the shield law, because I'm a photo
 22 editor at a porno magazine or a golf magazine or a
 23 professional wrestling magazine." That's not what the
 24 legislature, in our view, intended.

25 So, we view the statute as clearly saying you

1 have to be employed by the news media that actually
2 publishes or broadcasts the particular work in dispute.
3 So here, O'Brien -- of course he's employed by the New
4 York Times, but the work in dispute in this case, it
5 wasn't published in the New York Times, it was a book.
6 This -- this is what's in dispute. This was a Warner
7 Books book. So, and that -- and that's our position as
8 to why we would still be protected under the New Jersey
9 law.

10 MR. CERESNEY: And we obviously disagree,
11 Your Honor. We --

12 THE COURT: All right.

13 MR. CERESNEY: And agree with Your Honor.
14 One additional thing, Your Honor. We actually have,
15 obviously, a number of other discovery issues,
16 including the tax return issue.

17 THE COURT: Oh, by the way, I had -- I had a
18 motion to quash a subpoena, I believe.

19 MR. CERESNEY: That's another issue, Your
20 Honor, that we want to raise today.

21 THE COURT: Well, let me do this. Let me
22 take a break, because now we're -- we're done this
23 aspect of the case. And at this point, it's really-
24 case management, it's no longer dealing with this
25 particular aspect of the case.

1 MR. CERESNEY: Okay.

2 THE COURT: We'll take a break and then tell
3 me what you want to talk about, so I could just get
4 different parts of the filing documents that I might
5 have a need --

6 MR. CERESNEY: Yeah. Your Honor, we sent a
7 letter yesterday which I think identifies the four or
8 five issues and I'll just enumerate them. One is the
9 tax return issue. And we have the tax return with us
10 and I think, you know, Your Honor --

11 THE COURT: The over-redaction?

12 MR. CERESNEY: Yes. And this -- this goes
13 beyond case management, I think, Your Honor, this is
14 actually, in our view, a violation of Your Honor's
15 court order. In some respects our view is that, you
16 know, the plaintiffs come to you with unclean hands
17 with regard to their motion to compel on the privilege
18 and then their non-compliance with the court's order.
19 I think when -- we should talk about that, I think;
20 and, obviously, you -- you've stayed the motion to
21 compel now until we start appellate review, so there's
22 not obviously immediate enforcement, but --

23 THE COURT: Okay. So you got over-redaction
24 tax returns.

25 MR. CERESNEY: We've got the tax returns.

1 We've got issues with the Weiser production and the
2 redaction log. Which didn't have any specificity at
3 all to challenge the basis for the redaction. You've
4 got --

5 THE COURT: You're saying that the privilege
6 log wasn't specific enough?

7 MR. CERESNEY: Not at all.

8 THE COURT: Okay.

9 MR. CERESNEY: The redaction log, rather.
10 And then we're missing a fair amount of the production.
11 We were told that we were gonna get a second batch of
12 Weiser documents and we don't -- we've actually asked
13 when you expect that and we haven't been told. And so
14 we're awaiting that and that was supposed to be
15 produced December 1st.

16 The third issue is the motion to quash you
17 mentioned. Which is currently returnable January 19th,
18 though our --

19 THE COURT: I think since you are here, maybe
20 I'd help you get rid of that.

21 MR. CERESNEY: That's right. Exactly.
22 Fourth, the - the issue of plaintiff's own production
23 and the time frame issue. Your Honor had expanded the
24 time frame at our last appearance to include an
25 additional two-year -- I'm sorry, a three-year period.

1 In response to that we got two documents. And that
2 seemed to us to be highly questionable, since it was
3 the plaintiff who claims those were extremely
4 burdensome to expand the time frame. And that was, you
5 know, one of the main bases for the objection. And so
6 we sought clarification from them and we haven't gotten
7 it and we would ask Your Honor to seek clarification on
8 that.

9 And finally on the interrogatories. We had
10 tried to meet and confer on this, Your Honor. We had a
11 meet and confer November 15th. We agreed they would
12 come back by December 4th to supplement their responses
13 on December -- and we actually gave them that two-and-
14 a-half weeks because of the holiday and they asked for
15 it, we wanted it earlier, we thought we were being
16 correctly understanding and the like. On December 4th
17 we get a letter that says that we'll get them in the
18 immediate future. We did get the responses yesterday,
19 it just so happens, coincidentally, in advance of
20 appearing before Your Honor.

21 We're not gonna raise the issues that we
22 still have in the interrogatories today, we'll leave
23 that for another day, but there's one issue --

24 THE COURT: You have to look at what you got.

25 MR. CERESNEY: That's right. Exactly.

1 There's one issue that I think is blare -- is glaring
2 that I think we do want to raise, and it's an issue
3 Your Honor has focused on before. It's the lost
4 corporate opportunities or lost corporate deals, which
5 are the crux of their claim of damage --

6 THE COURT: Yeah, I said -- before I said
7 specify what they were, because I had specif -- I said,
8 well, listen. The allegation was, was damage to the
9 brand -- the Trump brand and I was kidding around with
10 you, I said, "What are you gonna show, that the Nielsen
11 ratings dropped two months after the book was published
12 in the Apprentice?"

13 MR. CERESNEY: Or no one's watching the Miss
14 USA Pageant.

15 THE COURT: And looking at the book, you
16 know, the -- what happened on the Apprentice was pretty
17 important in his career.

18 MR. CERESNEY: That's right.

19 THE COURT: But --

20 MR. CERESNEY: Yeah. And we still have
21 gotten that and there was an interrogatory on that, we
22 were told we were gonna get supplements on that, it was
23 not included in the letter. We were told in the letter
24 they need to --

25 THE COURT: Yeah, because I said --

1 MR. CERESNEY: -- confer with their client.

2 THE COURT: -- they could specify it -- they
3 could --

4 MR. CERESNEY: Right.

5 THE COURT: -- be specific about what
6 contracts or lost opportunities --

7 MR. CERESNEY: It seems to us that should be
8 obvious. I mean, you should know that by now. You
9 should have known that when you filed the suit, is our
10 view. And so we would like Your Honor to, you know, --

11 THE COURT: I guess, by the way, one of the
12 reasons I limited some of the provisions of the income
13 tax returns -- because if you remember -- again, I'll
14 go back into this in a minute, but the income tax
15 returns, I -- I said to them, "Well, how -- how is it
16 that the -- that the plaintiff will prove damages? The
17 only way he can prove damages is a reduction" -- that's
18 when I got into the sarcastic remark, pardon my tone,
19 about the -- the damage to the -- the Trump brand with
20 the Apprentice Nielsen ratings dropping.

21 And I said, "How are you gonna prove damages,
22 if you don't prove a diminishment of income?" And I
23 said, if I'm not mistaken, there's standard deviations
24 in income every year no matter if you're -- especially
25 if you're in business and that you needed a wide range

1 of tax returns to try to ascertain what the income was,
2 what the standard deviation would be and then to see
3 whether or not there was something that would be a loss
4 outside the standard deviation that potentially could
5 be attributable to the publication of the book.

6 And to that, the plaintiff responded, "Wait a
7 sec -- wait a second, Judge. We can identify the lost
8 opportunities." So --

9 MR. CERESNEY: Right. That was the mid-
10 October phone call, Your Honor, that --

11 THE COURT: And that may be in regard to the
12 -- the other issue of expansion of tax returns. So you
13 haven't gotten anything yet. But while -- what -- what
14 I'm gonna ask you to do when I take a break here for
15 about 10 or 15 minutes, is -- is if -- and you've got
16 counsel here, I guess some of the people from both
17 firms are probably here that have a good idea of what's
18 going on in discovery. If you -- you folks could talk,
19 see if you could resolve some of these issues.

20 Any other issues?

21 MR. CERESNEY: No, those are the issues we
22 wanted to raise today.

23 THE COURT: Anything the plaintiff has? For
24 the good of the order, other than what we've taken care
25 of today?

1 MR. TAMBUSI: Well, a lot of it, Judge, has
2 to do with the -- the motion today and what their
3 privilege log said and how we don't believe that that
4 privilege log was complete. But a lot of that depends
5 on what the Appellate Division does in this case.

6 THE COURT: All right. Well --

7 MR. TAMBUSI: If they take a motion for
8 leave to appeal, then, you know, all of this is moot.
9 If they do not, then we're back. And rather than beat
10 a dead horse -- and then there's also the aspect,
11 Judge, as we're taking this break, that we need to
12 think about.

13 When Your Honor left the issue of what we,
14 the plaintiff, had to produce by way of personal
15 information, the Court also recognized that some of
16 this required -- or may require expert testimony.
17 Plain -- the defendants have put up some financial
18 person from affiliate of a law firm in some --

19 THE COURT: I think they told me they had an
20 expert already.

21 MR. TAMBUSI: Correct. And -- and we will
22 be prepared to, also, Judge. Because when we think
23 about this issue of the tax return, I mean what really
24 bears on net worth is a technical question that's far
25 above my level of understanding of the tax --

1 THE COURT: Well, Mr. Tambussi, the tax
2 return is two -- a twofold reason. I ordered tax
3 returns disclosed for a couple reasons. Number one --
4 and that's why I expanded it. Number one, because it -
5 - there are aspects of the tax return that would
6 indicate the acquisition of assets of sale, assets of
7 depreciation, things of that nature; whereby at least
8 there could be some verification as to the assets and
9 liabilities.

10 Additionally, because I was unsure as to what
11 the damages were that were being asserted, as I already
12 said about the -- the years of the tax returns,
13 standard deviation, whether or not any loss is
14 attributable to this, that's why I had ordered the tax
15 returns to be disclosed as well. Again, that's
16 integrated in the -- the requirement.

17 You're saying to -- if you want to -- if your
18 client's willing to be bound by the notion that I'm not
19 alleging any diminishment of income that will show on a
20 tax return, but the loss of prospective profits as a
21 result of contracts not being entered into because of
22 the -- my questionable net worth now, that --

23 MR. TAMBUSI: And value of the brand.

24 THE COURT: See, that affects the amount of
25 redaction that has to be done to the return.

1 MR. TAMBUSI: Absolutely, Judge. And, with
2 all due respect, we've produced 100,000 page -- over
3 100,000 pages of documents thus far. This production
4 has taken far greater time than we anticipated.
5 There's 70,000 additional pages that are going -- that
6 we're going through now. 70,000 were produced
7 yesterday? December 1st.

8 THE COURT: Okay.

9 MR. TAMBUSI: Then we have additional pages
10 that we're doing now. We are producing those documents
11 on a rolling basis. Rather than take this piecemeal --
12 and people come in and suggest that the plaintiff is
13 acting with unclean hands when, in fact, the plaintiff
14 waited months and months and months and months for the
15 defendants to initially respond to any discovery
16 request -- maybe we should take the time and allow us
17 to produce the entirety of these documents, which we
18 are doing with all diligence, have them review those
19 documents, those working papers from the accountants,
20 and then determine whether or not we have or have not
21 produced enough information for someone to determine
22 Donald Trump's net worth at a particular time.

23 That seems to me to be the better approach,
24 rather than to micro-manage each and every document
25 that comes through.

1 THE COURT: Well, that's out there now, so
2 what I'm gonna do is, I -- like I said, I'm gonna take
3 about a 15-minute break and then maybe you guys can
4 confer. If you need more time, I've got the time to
5 give you today.

6 MR. CERESNEY: That's --

7 THE COURT: As long as your office doesn't --

8 MR. CERESNEY: I --

9 THE COURT: -- get me involved in some other
10 mess that's going on out there. I have depositions
11 taking place in the -- in the --

12 MR. TAMBUSSI: Maaco case, Judge?

13 THE COURT: Yeah. And HMO versus a drug
14 company.

15 MR. CERESNEY: And that's fine, Your Honor.
16 I guess the one thing I'd say in response to that is
17 the order was clear on the tax return. It said the
18 only thing that could be redacted was personal
19 information.

20 THE COURT: Yes, charitable --

21 MR. CERESNEY: I think Your Honor --

22 THE COURT: -- contributions, alimony
23 payments, whether or not we -- being, again, the -- the
24 tone, the sarcastic tone was used as to whether or not
25 he contributed a dollar or two dollars to the --

1 MR. CERESNEY: Contained in the order.

2 THE COURT: -- presidential campaign fund.

3 MR. CERESNEY: Doesn't mean it doesn't have
4 legal authority, Your Honor, even if it's sarcastic.

5 THE COURT: I know, I agree, I agree with
6 you.

7 MR. CERESNEY: And your letter to us, where
8 you actually indicated that you had -- you were gonna
9 charge us in the order, that also had legal authority,
10 obviously. But the point I'm making is Your Honor has
11 decided the --

12 THE COURT: I didn't charge you, did I?

13 MR. CERESNEY: You did not and we're waiting
14 for the bill.

15 THE COURT: You're not getting it.

16 MR. CERESNEY: The point is, Your Honor, this
17 has been decided, we have stood here and I think we
18 actually stood before Your Honor and said we were
19 concerned about any broad allowance of redaction here,
20 because we assumed that they were gonna do just what
21 they did. We certainly didn't assume that there would
22 be eight numbers that they would leave on the return.
23 So we have these --

24 THE COURT: That was it?

25 MR. CERESNEY: Do you want to take the

1 return, Your Honor? We have it. You can take it back
2 with you and peruse, it won't --
3 THE COURT: Sure, okay.
4 MR. CERESNEY: It won't take you long --
5 THE COURT: Did you -- do you have a cop --
6 obviously, you have a copy of it, you gave it to them.
7 MR. CERESNEY: It won't take long, Your
8 Honor, because there's hardly any numbers in there that
9 are --
10 THE COURT: He didn't leave a Social Security
11 number did he?
12 MR. CERESNEY: He did not, he redacted that
13 as well, Your Honor.
14 THE COURT: All right.
15 MR. TAMBUSI: Judge -- Judge, just so the
16 record is clear, the plaintiff has used the advice of
17 tax counsel to determine that which is relevant
18 according to the parameters of Your Honor's order. In
19 making the determination what to redact --
20 THE COURT: You had an accountant try to
21 figure what I said?
22 MR. TAMBUSI: No, we had a tax --
23 THE COURT: I mean, the Appellate Division --
24 MR. TAMBUSI: A tax lawyer.
25 THE COURT: -- sometimes shakes their heads,

1 "What the heck did he say?"
2 MR. TAMBUSI: Former counsel for the IRS.
3 MR. CERESNEY: Your Honor, the order says
4 personal information. It doesn't say relevant to net
5 worth. That's the whole point. The --
6 MR. TAMBUSI: The whole point of the
7 argument, Judge, was did it apply to net worth or not.
8 This is the problem that we have in each and every meet
9 and confer. Your Honor's order gets reargued at time
10 and time and time again.
11 MR. CERESNEY: We agree with that, Your
12 Honor. And that's not our -- us rearguing it. You
13 issued an order, it seems pretty clear to me, personal
14 information is not, as they -- they submitted in their
15 proposed order, relevant to net worth. And that's was
16 what we were concerned about and that's why your order
17 -- Your Honor ordered this broad -- this limited,
18 narrow category of information be redacted, because so
19 that they couldn't make those -- that -- that's a
20 judgment that our experts should be making after
21 getting this information, Your Honor. And there
22 shouldn't be a confidentiality concern here, because we
23 have this confidentiality order that --
24 MR. TAMBUSI: We're -- we're gonna --
25 THE COURT: I think I'm gonna hire his

1 accountant, because he only paid \$38,000 in tax.

2 MR. CERESNEY: Actually, the 38 -- well, 38
3 million, I think, Your Honor.

4 THE COURT: Oh, thanks. I missed that --

5 MR. RESSLER: So did Mr. O'Brien, Judge.

6 MR. TAMBUSI: That's exactly the type of
7 information that, when it gets published on the
8 internet, the barn door is left open. If it's not
9 relevant to net worth, it's not something that needs to
10 be disclosed.

11 MR. CERESNEY: And I think --

12 THE COURT: All right. Well, look. I'll --

13 MR. TAMBUSI: If the 10-1s are there, Judge,
14 all the identification, well -- the companies, the
15 partnerships are there, they have all the information
16 that they need.

17 MR. CERESNEY: And I guess on that, the name
18 of the corporation doesn't help us do anything. We
19 don't know what his interest in that is, what the
20 income or expenses from that corporation during the
21 year are, what his tax basis would be. All that
22 information is important to value that outfit and --

23 MR. TAMBUSI: It doesn't matter.

24 THE COURT: All right. Well, look. Let me
25 take a break. There is --

Findings by the Court

1 MR. CERESNEY: Pretty funny.

2 THE COURT: Not much on here.

3 MR. CERESNEY: Exactly. We thought you would
4 see that, Your Honor.

5 THE COURT: Okay.

6 MR. CERESNEY: Okay? Thank you, Your Honor.

7 THE COURT: See you in a bit. But that still
8 doesn't mean that you shouldn't talk.

9 MR. CERESNEY: Okay. We will, Your Honor.

10 (Brief recess)

11 THE COURT: -- the Trump case. Defense has
12 raised some very serious issues that deal with the
13 failure of the plaintiff to comply with the discovery
14 that I had previously ordered. I did go through this
15 tax return. It's pretty easy to go through when you
16 have all these redactions here. And as I said before I
17 left the bench, that it was so important to know what
18 his missed business opportunities were, because they --
19 they -- the relevancy of the documents contained -- or
20 the information contained in the tax return are
21 associated with that. Because if the damages are not a
22 loss of income, but rather a loss of specific contract
23 opportunities, certainly the information contained with
24 respect to income is not germane.

25 But I'm gonna suggest this to the plaintiffs.

1 You have to produce that -- that information and you --
2 you should do so well in advance of the January 19th
3 date that I have given you in chambers. I said you'll
4 come back here January 19th, I'll deal with the motion
5 to quash at that point. I want to know what's been
6 produced as far as the provision of the information
7 with respect to damages. Because without that -- if
8 you get here on the 19th and you haven't given them
9 that information, guess what? The tax return, all
10 these white papers across the income information that
11 are all across Schedule C, they're all gonna have to be
12 removed, you're gonna have to give them a full
13 disclosure of the income. It's as simple as that.

14 Because I'm not gonna go on with the
15 presumption that -- that Mr. Trump lost business
16 opportunities and have to have them delay further their
17 analysis of their exposure in the case. And why am I
18 doing this? Because I -- I suggested to both of you
19 that I thought there was some way to resolve this case
20 in some meaningful fashion without it being a dollars
21 and cents issue.

22 I really -- and I'm ordering and directing
23 you to meet prior well in advance of January 19th,
24 representatives of each side, if not the parties
25 themselves, to -- to try to come up with a resolution

1 in this particular case. I think it behooves both of
2 you to do that. The amount of the discovery is gonna
3 be enormous, this case is gonna probably end up getting
4 delayed because of what I perceive to be -- I really
5 believe the Appellate Division is gonna take the issue,
6 because it has -- well, it doesn't have constitutional
7 dimensions, it certainly has important dimensions that
8 deal with the rights of the press.

9 So, in the interim, Mr. Tambussi, please
10 press your client. I know that the holidays are upon
11 us, so we're gonna -- I'm gonna -- I am gonna expect
12 within 15 days that you provide them with the specific
13 information that I had heretofore ordered. And I'm not
14 gonna rule on the redactions at the present time until
15 I get that information. Like I said to defense, if you
16 don't get the information, you're gonna have to rely
17 upon income information with respect to the damages and
18 you're gonna get the information that you need to
19 calculate your damages. It's as simple as that. And
20 so, a later point in time, if they come up with the
21 information, oh well, you got what you need.

22 The Weiser documents, I understand that
23 you're gonna continue to produce that information?

24 MR. TAMBUSI: Yes, Your Honor.

25 THE COURT: And you'll continue to do so --

1 please, have it to them well in advance, at least nine
2 days in advance of the return date of the motion, so I
3 could deal with it. The mot -- again, I recognize that
4 the appellate review may delay this case, ultimately,
5 and I don't want you to have to spend money that you
6 ordinarily wouldn't have to spend. But eventually,
7 whether -- whether or not the Appellate Division
8 upholds my determination or returns it to me for
9 further hearing, this case is still apparently gonna
10 proceed and you're gonna have to produce the
11 information.

12 As far as the interrogatories. Additional
13 information has just been provided and we give the
14 defense the opportunity to review it carefully so that
15 at least if they have some requests for more specific
16 answers or to compel additional information, they can
17 do so in some meaningful fashion, as opposed to having
18 to do this in the dark. It's unfair to the defense to
19 have to do it in the dark.

20 But again, from the perspective of
21 settlement, I know that you've talked about some emails
22 that are in existence, Mr. Tambussi, and that I -- I
23 don't -- I'm assuming you got -- you got them through
24 the ordinary course of discovery, so the defense is
25 aware of them?

1 MR. RESSLER: They were all produced by the
2 defense, Your Honor.

3 THE COURT: Okay. Well, there's a lot of
4 documents that had been produced and maybe if you could
5 highlight some of those documents and provide some
6 motivation to the defense to look at it from a
7 different perspective for settlement, please do so.
8 Please also know that Mr. Trump -- let Mr. Trump know
9 that he may be in a position of having to disclose a
10 lot of financial information that previously he had not
11 been required to provide, and maybe that will serve
12 some motivation on his part to try to resolve this
13 case, again, in some meaningful non-economic way.
14 Because I think that there's enough latitude on both
15 sides of this fence to be able to resolve this case in
16 some meaningful fashion.

17 MR. MELODIA: Your Honor, may I --

18 THE COURT: Sure.

19 MR. MELODIA: -- make one suggestion, in
20 keeping with I think what Your Honor has been
21 suggesting, in terms of where the Court is leaning or
22 likely to rule on certain issues.

23 THE COURT: I'll likely --

24 MR. MELODIA: But -- but --

25 THE COURT: I'm likely to order that

1 additional information be provided in tax returns.

2 MR. MELODIA: But -- but not formally making
3 that ruling today, not --

4 THE COURT: No.

5 MR. MELODIA: And I'd suggest that we take
6 that same approach for the issues that we've also
7 argued here today, that is plaintiff's motion to compel
8 and the privilege issues also be held in abeyance until
9 January 19th, to see whether or not the parties can
10 resolve these issues prior to that date. While that
11 would result in some small delay over the holidays, it
12 is over the holidays and why not have all issues
13 resolved on the 19th or at least have all parties
14 believe that all issues will be resolved on the 19th,
15 if they cannot conclude this case in settlement.

16 MR. TAMBUSSI: We're trying to understand,
17 does that mean you're just asking for a delay of time
18 before you have to file your notice -- notice of motion
19 for leave to appeal?

20 MR. MELODIA: I'm asking for a delay in the
21 actual entry of an order in the same way --

22 THE COURT: Well, I'll tell you what --

23 MR. MELODIA: -- if Your Honor's not --

24 THE COURT: -- somebody's got to draft the
25 order and send it to me and guess what? Come Friday,

1 if that order sits here, it's gonna sit here until at
2 least January the 8th, when I come back from Pasadena.
3 So -- and then it will end up being on my desk and I'll
4 have to hold it probably under the five-day rule;
5 which, liberally interpreted, takes me to the 18th of
6 January and I --

7 MR. TAMBUSSI: Understood, Your Honor.

8 THE COURT: -- won't execute that order until
9 at least January 19th, as a practical matter.

10 MR. TAMBUSSI: Understood, Your Honor.

11 THE COURT: And you could put that in your
12 cover letter to me that we understand Your Honor will
13 not be entertaining the execution of this order until
14 January the 22nd, a Monday. And I'll be glad to hold
15 it until then, because I won't get the time to really
16 fully read it and understand it until that time anyhow.
17 And I don't want to do anything half-baked.

18 MR. TAMBUSSI: Understood, Your Honor.

19 THE COURT: Okay? Does that help you?

20 MR. MELODIA: Yes, Your Honor. Thank you.

21 THE COURT: Okay. That'll save you the have
22 -- having to get the transcripts, file costs -- pay the
23 costs of appeal and maybe you'll come back here and
24 tell me that you resolved the case. Nothing would be --
25 - that would be a great Kwanza present.

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MR. TAMBUSSI: Thank you, Your Honor.
MR. CERESNEY: Festivus, Your Honor.
THE COURT: Thanks, everybody. Hey, have a happy holiday. I appreciate the great lawyering that I get in cases like this, it really makes my -- my decision to come back to civil a great one. No, I'm serious. I mean, if anything is a benefit, it's getting -- having fine lawyering and I really get -- a lot of good lawyers appear in front of me and you guys, collectively -- guys, in the politically correct sense, for all the rest of you that do the work -- you really do an excellent job for your clients. Thanks!
MR. CERESNEY: Thank you, Your Honor.
MR. TAMBUSSI: Thank you, Judge.
MR. RESSLER: Thank you, Your Honor.
MR. MELODIA: Thank you, Your Honor.

* * * * *

CERTIFICATION

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I, TERRY L. DeMARCO, the assigned transcribers, do hereby certify the foregoing transcript of proceedings on copy of tape number 1, index number from 0037 to END; and tape number 2, index number from 0000 to 1245, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

Terry L. DeMarco
Terry L. DeMarco

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January 10, 2007

BY E-MAIL AND U.S. MAIL

Andrew J. Ceresney, Esq.
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919 Third Avenue
New York, New York 10022

Re: *Trump v. O'Brien, et al.*

Dear Andrew:

Plaintiff Donald J. Trump hereby supplements his interrogatory responses as follows:

INTERROGATORY NO. 21

To the present, set forth the details of any deals that you believe were prevented or interfered with because of the allegedly defamatory statements referenced in your Complaint, including but not limited to transactions, purchases, sales, transfer of real or other assets, or other arrangements. Specify the nature and basis for your belief, and identify and attach all documents relevant thereto.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 21

Trump objects to this interrogatory on the ground that it is unduly burdensome. Trump further objects to this interrogatory on the ground that it is premature. Subject to and without waiving any of the foregoing, Trump responds as follows:

Trump believes that defendants' publication of the defamatory statements identified in response to Interrogatory No. 1 ("Defendants' Defamatory Statements") prevented him from closing, or interfered with, transactions involving the following projects:

- (i) Trump International Hotel and Condominiums in Phoenix, Arizona (the opponents of which relied, in part, on Defendants' Defamatory Statements);
- (ii) The TrumpStreet Casino and Entertainment Complex in Philadelphia, Pennsylvania (Defendants' Defamatory Statements were a factor in connection with the Pennsylvania Gaming Control Board's denial on December 20, 2006 of Trump Entertainment Resorts' application for a gaming license);

Andrew J. Ceresney, Esq.
January 10, 2007
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- (iii) 400 Fifth Avenue in New York, New York (Defendants' Defamatory Statements were a factor in preventing Donald Trump from acquiring the property);
- (iv) The Moscow Trump International development;
- (v) Trump Tower in Istanbul, Turkey.

INTERROGATORY NO. 31

Identify all individuals who created or contributed to the content of the brochure left in guest rooms at Mar-a-Lago, which estimated your net worth at \$9.5 billion (referenced on page 154 of the Book). Set forth the complete factual basis for that estimate, including but not limited to the source(s) of information used in connection with the estimate, and identify and attach all documents relevant thereto.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 31

Trump objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing, Trump responds as follows:

Trump has no information as to the individuals who created or contributed to the brochure left in guest rooms at Mar-a-Lago that estimated his net worth at \$9.5 billion.

As always, please feel free to contact me with any questions.

Sincerely,



Mark P. Ressler


cc: Mark Melodia (by e-mail)
William M. Tambussi (by e-mail)

Sirs:

PLEASE TAKE NOTICE that the following are the objections and responses of plaintiff Donald J. Trump ("Trump") to Defendants' Second Set of Interrogatories (the "Interrogatories").

Dated: July 31, 2007

KASOWITZ, BENSON, TORRES &
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Attorneys for Plaintiff Donald J. Trump

OBJECTIONS

- A. Trump objects to the Interrogatories to the extent they seek information not currently available to Trump. Trump will provide information currently available to him, and will supplement his answers, if necessary, to these and any other interrogatories, as required by the Court Rules.
- B. Trump objects to the Interrogatories to the extent they seek to impose obligations on him greater than those imposed by the Court Rules or any order of the Court.
- C. Trump objects to the Interrogatories to the extent they are unreasonably cumulative or duplicative. Where a document is responsive to more than one Interrogatory, Trump will produce such document once.
- D. Trump objects to the Interrogatories to the extent they are vague, ambiguous, or confusing.
- E. Trump objects to the Interrogatories to the extent they are overly broad, unduly burdensome, or oppressive.
- F. Trump objects to the Interrogatories to the extent they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.
- G. Trump objects to the Interrogatories to the extent they seek information or documents that already is in the possession, custody or control of Defendants, is as readily available to the Defendants as to Trump, or is ascertainable from public sources.
- H. Trump objects to the Interrogatories to the extent they seek information protected from disclosure by any privilege or immunity, including the attorney-client privilege, the work-product doctrine, or any other privilege or protection from disclosure provided by law. Any inadvertent disclosure of any privileged information shall not be deemed or construed to constitute a waiver of any of Trump's privileges or rights.

I. Trump objects to the Interrogatories to the extent they seek disclosure of information that would violate individual privacy interests, confidentiality agreements, or other arrangements with any individual or entity.

J. Trump objects to the defendants' listed "Definitions" and "Instructions" because they purport to impose duties on him beyond those required by the Court Rules.

K. Trump objects to the use and definition of the term "Trump-related entities" on the grounds that it is overly broad, it renders the Interrogatories unduly burdensome and oppressive, and it makes the Interrogatories call for information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

L. Trump objects to Instructions Nos. 9 and 10 because they purport to impose obligations beyond those imposed by the Court Rules and are unduly burdensome and oppressive.

M. Any statement herein that Trump will produce information or documents in response to an Interrogatory does not mean that Trump does, in fact, have any such information or documents, or that any such information or documents exist.

N. The foregoing objections shall be considered as made, to the extent applicable, in response to each of the Interrogatories, as if the objections were set forth fully in such response.

DEFINITIONS

A. In these responses, the "Book" refers to *TrumpNation: The Art of Being the Donald*, written by Timothy O'Brien and published by the Warner Defendants.

RESPONSES

Interrogatory No. 1

With respect to the Trump International Hotel and Condominiums in Phoenix, Arizona, identified in a letter from Plaintiff's counsel dated January 10, 2007 as a transaction "prevented . . . from closing, or interfered with" by Defendants' allegedly defamatory statements:

- a. Identify each person involved in relevant negotiations or other communications relating to the above transaction, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, and other parties to the potential transaction and their employees or agents;
- b. Set forth the specific location of the proposed building or project;
- c. Explain the nature of Plaintiff's participation or interest in the proposed transaction, including but not limited to whether Plaintiff has or would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;
- d. Set forth the amount of money that Plaintiff claims he lost because the transaction failed to close or was interfered with and the full basis for calculating such loss;
- e. Describe the steps taken by Plaintiff or others involved in the transaction in connection with the negotiation or execution of the transaction;
- f. Describe the involvement of any governmental entity or official in the transaction, including but not limited to the involvement of the State of Arizona or any local governmental entity or official;

- g. Set forth any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction;
- h. Explain the current status of the transaction;
- i. Set forth the full basis for Plaintiff's belief that the opponents of the Trump International Hotel and Condominiums in Phoenix, Arizona "relied, in part, on Defendants' Defamatory Statements," including but not limited to identifying the opponents who so relied, explaining the nature of their reliance, and setting forth the specific defamatory statements that they relied upon and the instances in which they relied upon them;
- j. Set forth the full basis for Plaintiff's belief that Defendants' allegedly defamatory statements interfered with the transaction or prevented the transaction from closing, including but not limited to identifying any person who informed or suggested to Plaintiff, any Trump-related entity, or any employee or agent of Plaintiff or any Trump-related entity that Defendants' allegedly defamatory statements were a factor in any person's decision regarding the potential transaction;
- k. For each person who Plaintiff believes made a decision relating to the transaction in part because of Defendants' allegedly defamatory statements, identify the decision-maker, set forth the specific defamatory statements that the person relied upon, and explain the nature of the person's reliance on the statements;
- l. Set forth all other factors of which Plaintiff is aware, not relating to Defendants' alleged defamatory statements, which interfered with the transaction or prevented the transaction from closing;

- m. Identify all communications relating to the negotiation, discussion, or termination of this transaction.

Response to Interrogatory No. 1

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the phrase "steps taken . . . in connection with the negotiation or execution of the transaction" is vague and ambiguous. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

Tevfik Arif and Jody Kriss of Bayrock Group engaged in negotiations for, and secured an ordinance to proceed with, a project to develop a Trump International Hotel and Tower in Phoenix, Arizona. Trump has been advised by Bayrock Group that opponents of the project expressed concern about Trump, based at least in part on defendants' defamatory statements about Trump and his net worth that appeared in the Book. The opponents of the project successfully challenged the ordinance through, among other things, a referendum before the city council.

The "nature of [Trump's] participation or interest" in the project was to obtain: (i) a licensing agreement; (ii) an ownership stake; and (iii) fees to be paid to the Trump hotel management group for its management of the property. As a result of defendants' defamatory statements, the project was cancelled before an agreement could be reached for any of items (i) to (iii) above.

Interrogatory No. 2

With respect to the TrumpStreet Casino and Entertainment Complex in Philadelphia, Pennsylvania, identified in a letter from Plaintiff's counsel dated January 10, 2007 as a transaction "prevented . . . from closing, or interfered with" by Defendants' allegedly defamatory statements:

- a. Identify each person involved in relevant negotiations or other communications relating to the above transaction, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, and other parties to the potential transaction and their employees or agents;
- b. Set forth the specific location of the proposed building or project;
- c. Explain the nature of Plaintiff's participation or interest in the proposed transaction, including but not limited to whether Plaintiff would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;
- d. Explain the nature of Trump Entertainment Resorts' participation or interest in the proposed transaction, including but not limited to whether Trump Entertainment Resorts would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;
- e. Set forth the amount of money that Plaintiff claims he lost because the transaction failed to close or was interfered with and the full basis for calculating such loss;

- f. Describe the steps taken by Plaintiff, Trump Entertainment Resorts, or others involved in the transaction in connection with the negotiation or execution of the transaction;
- g. Explain the current status of the transaction;
- h. Set forth the full basis for Plaintiff's belief that "Defendants' Defamatory Statements were a factor in connection with the Pennsylvania Gaming Board's denial on December 20, 2006 of Trump Entertainment Resorts' application for a gaming license," including but not limited to identifying any person who informed or suggested to Plaintiff, any Trump-related entity, or any employee or agent of Plaintiff or any Trump-related entity that Defendants' allegedly defamatory statements were a factor in the Gaming Board's decision;
- i. For each person who Plaintiff believes made a decision relating to the transaction in part because of Defendants' allegedly defamatory statements, including but not limited to any Gaming Board member, identify the decision-maker, set forth the specific defamatory statements that the person relied upon, and explain the nature of the person's reliance on the statements;
- j. Set forth the number of any page in the Commonwealth of Pennsylvania Gaming Control Board's February 1, 2007 Order and Adjudication on which the Board indicates reliance on Defendants' allegedly defamatory statements or indicates that Defendants' alleged defamatory statements were a factor in its decision;
- k. Set forth all other factors of which Plaintiff is aware, not relating to Defendants' alleged defamatory statements, which interfered with the transaction or prevented the transaction from closing;

1. Identify all communications relating to the negotiation, discussion, or termination of this transaction.

Response to Interrogatory No. 2

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the phrase "steps taken . . . in connection with the negotiation or execution of the transaction" is vague and ambiguous. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

Trump does not intend to present evidence at trial concerning the TrumpStreet Casino and Entertainment Complex in Philadelphia, Pennsylvania.

Interrogatory No. 3

With respect to 400 Fifth Avenue in New York, New York, identified in a letter from Plaintiff's counsel dated January 10, 2007 as a transaction "prevented . . . from closing, or interfered with" by Defendants' allegedly defamatory statements:

- a. Identify the person from whom Plaintiff or any Trump-related entity attempted to acquire development and branding rights in connection with the property;
- b. Identify each person involved in relevant negotiations or other communications relating to the above transaction, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, and other parties to the potential transaction and their employees or agents;

- c. Explain the nature of Plaintiff's participation or interest in the proposed transaction, including but not limited to whether Plaintiff has or would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;
- d. Set forth the amount of money that Plaintiff claims he lost because the transaction failed to close or was interfered with and the full basis for calculating such loss;
- e. Describe the steps taken by Plaintiff or others involved in the transaction in connection with the negotiation or execution of the transaction;
- f. Explain the current status of the transaction;
- g. Set forth the full basis for Plaintiff's belief that Defendants' allegedly defamatory statements were a factor in preventing Donald Trump from acquiring development and branding rights in connection with the property, including but not limited to identifying any person who informed or suggested to Plaintiff, any Trump-related entity, or any employee or agent of Plaintiff or any Trump-related entity that Defendants' allegedly defamatory statements were a factor in any person's decision regarding the potential transaction;
- h. For each person who Plaintiff believes made a decision relating to the transaction in part because of Defendants' allegedly defamatory statements, identify the decision-maker, set forth the specific defamatory statements that the person relied upon, and explain the nature of the person's reliance on the statements;

- i. Set forth all other factors of which Plaintiff is aware, not relating to Defendants' alleged defamatory statements, which interfered with the transaction or prevented the transaction from closing;
- j. Identify all communications relating to the negotiation, discussion, or termination of this transaction.

Response to Interrogatory No. 3

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the phrase "steps taken . . . in connection with the negotiation or execution of the transaction" is vague and ambiguous. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

Howard Lorber of Prudential Douglas Elliman engaged in negotiations with David Bizzi of Bi & Di Real Estate SpA concerning a possible project to develop a Trump hotel and condominium at 400 Fifth Avenue, New York, New York. Trump has been advised by Lorber that it was Lorber's impression that Bizzi did not proceed with Trump for the project because Bizzi had concerns about Trump, based at least in part on defendants' defamatory statements about Trump and his net worth that appeared in the Book.

The "nature of [Trump's] participation or interest" in the project was to obtain a licensing agreement.

Interrogatory No. 4

With respect to the **Moscow Trump International development in Moscow, Russia**, identified in a letter from Plaintiff's counsel dated January 10, 2007 as a transaction "prevented . . . from closing, or interfered with" by Defendants' allegedly defamatory statements:

- a. Identify each person involved in relevant negotiations or other communications relating to the above transaction, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, and other parties to the potential transaction and their employees or agents;
- b. Set forth the specific location of the proposed building or project;
- c. Explain the nature of Plaintiff's participation or interest in the proposed transaction, including but not limited to whether Plaintiff would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;
- d. Set forth the amount of money that Plaintiff claims he lost because the transaction failed to close or was interfered with and the full basis for calculating such loss;
- e. Describe the steps taken by Plaintiff or others involved in the transaction in connection with the negotiation or execution of the transaction;
- f. Describe any involvement or influence of any Russian governmental entity or official, whether national or local, in the transaction;
- g. Set forth any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction;
- h. Explain the current status of the transaction;

- i. Set forth the full basis for Plaintiff's belief that Defendants' allegedly defamatory statements interfered with the transaction or prevented the transaction from closing, including but not limited to identifying any person who informed or suggested to Plaintiff, any Trump-related entity, or any employee or agent of Plaintiff or any Trump-related entity that Defendants' allegedly defamatory statements were a factor in any person's decision regarding the potential transaction;
- j. For each person who Plaintiff believes made a decision relating to the transaction in part because of Defendants' allegedly defamatory statements, identify the decision-maker, set forth the specific defamatory statements that the person relied upon, and explain the nature of the person's reliance on the statements;
- k. Set forth all other factors of which Plaintiff is aware, not relating to Defendants' alleged defamatory statements, which interfered with the transaction or prevented the transaction from closing;
- l. Identify all communications relating to the negotiation, discussion, or termination of this transaction.

Response to Interrogatory No. 4

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the phrase "steps taken . . . in connection with the negotiation or execution of the transaction" is vague and ambiguous. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible

evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

Tevfik Arif and Constantine Yudin of Bayrock Group engaged in negotiations on behalf of Trump with certain developers, investors and related persons, including Ilya Haykin, concerning a project to develop a Trump International Hotel and Tower in Moscow, Russia. Trump has been advised by Bayrock Group that the developers, investors and related persons in Moscow did not proceed with Trump for the project because they had concerns about Trump, based at least in part on defendants' defamatory statements about Trump and his net worth that appeared in the Book, and that were excerpted from the Book in a *New York Times* article on October 23, 2005.

The "nature of [Trump's] participation or interest" in the project was to obtain: (i) a licensing agreement; (ii) an ownership stake; and (iii) fees to be paid to the Trump hotel management group for its management of the property. As a result of defendants' defamatory statements, the project was cancelled before an agreement could be reached for any of items (i) to (iii) above.

Interrogatory No. 5

With respect to the Trump Tower in Istanbul, Turkey, identified in a letter from Plaintiff's counsel dated January 10, 2007 as a transaction "prevented . . . from closing, or interfered with" by Defendants' allegedly defamatory statements:

- a. Identify each person involved in relevant negotiations or other communications relating to the above transaction, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, and other parties to the potential transaction and their employees or agents;

- b. Set forth the specific location of the proposed building or project;
- c. Explain the nature of Plaintiff's participation or interest in the proposed transaction, including but not limited to whether Plaintiff has or would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;
- d. Set forth the amount of money that Plaintiff claims he lost because the transaction failed to close or was interfered with and the full basis for calculating such loss;
- e. Describe the steps taken by Plaintiff or others involved in the transaction in connection with the negotiation or execution of the transaction;
- f. Describe any involvement or influence of any Turkish governmental entity or official, whether national or local, in the transaction;
- g. Set forth any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction;
- h. Explain the current status of the transaction;
- i. Set forth the full basis for Plaintiff's belief that Defendants' allegedly defamatory statements interfered with the transaction or prevented the transaction from closing, including but not limited to identifying any person who informed or suggested to Plaintiff, any Trump-related entity, or any employee or agent of Plaintiff or any Trump-related entity that Defendants' allegedly defamatory statements were a factor in any person's decision regarding the potential transaction;

- j. For each person who Plaintiff believes made a decision relating to the transaction in part because of Defendants' allegedly defamatory statements, identify the decision-maker, set forth the specific defamatory statements that the person relied upon, and explain the nature of the person's reliance on the statements;
- k. Set forth all other factors of which Plaintiff is aware, not relating to Defendants' alleged defamatory statements, which interfered with the transaction or prevented the transaction from closing;
- l. Identify all communications relating to the negotiation, discussion, or termination of this transaction.

Response to Interrogatory No. 5

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the phrase "steps taken . . . in connection with the negotiation or execution of the transaction" is vague and ambiguous. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

Tevfik Arif of Bayrock Group engaged in negotiations on behalf of Trump with certain developers, investors and related persons concerning a project to develop a Trump International Hotel and Tower in Istanbul, Turkey. Trump has been advised by Bayrock Group that the investors decided not to pursue the project, in part, because they had concerns about Trump, based at least in part on defendants' defamatory statements about Trump and his net worth that appeared in the Book.

The "nature of [Trump's] participation or interest" in the project was to obtain: (i) a licensing agreement; (ii) an ownership stake; and (iii) fees to be paid to the Trump hotel management group for its management of the property. As a result of defendants' defamatory statements, the project was cancelled before an agreement could be reached for any of items (i) to (iii) above.

Interrogatory No. 6

With respect to the Trump International Hotel and Tower in Kiev, Ukraine, identified in a letter from Plaintiff's counsel dated January 10, 2007 as a business opportunity "lost, . . . affected, impaired or interfered with" by Defendants' allegedly defamatory statements:

- a. Identify each person involved in relevant negotiations or other communications relating to the above transaction, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, and other parties to the potential transaction and their employees or agents;
- b. Set forth the specific location of the proposed building or project;
- c. Explain the nature of Plaintiff's participation or interest in the proposed transaction, including but not limited to whether Plaintiff has or would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;
- d. Set forth the amount of money that Plaintiff claims he lost because the transaction was lost, affected, impaired, or interfered with and the full basis for calculating such loss;

- e. Describe the steps taken by Plaintiff or others involved in the transaction in connection with the negotiation or execution of the transaction;
- f. Describe any involvement or influence of any Ukrainian governmental entity or official, whether national or local, in the transaction;
- g. Set forth any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction;
- h. Explain the current status of the transaction;
- i. Set forth the full basis for Plaintiff's belief that Defendants' allegedly defamatory statements affected, impaired, interfered with, or caused the loss of the transaction, including but not limited to identifying any person who informed or suggested to Plaintiff, any Trump-related entity, or any employee or agent of Plaintiff or any Trump-related entity that Defendants' allegedly defamatory statements were a factor in any person's decision regarding the potential transaction;
- j. For each person who Plaintiff believes made a decision relating to the transaction in part because of Defendants' allegedly defamatory statements, identify the decision-maker, set forth the specific defamatory statements that the person relied upon, and explain the nature of the person's reliance on the statements;
- k. Set forth all other factors of which Plaintiff is aware, not relating to Defendants' alleged defamatory statements, which affected, impaired, interfered with, or caused the loss of the transaction;
- l. Identify all communications relating to the negotiation, discussion, or termination of this transaction.

Response to Interrogatory No. 6

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the phrase "steps taken . . . in connection with the negotiation or execution of the transaction" is vague and ambiguous. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

Tevfik Arif of Bayrock Group engaged in negotiations on behalf of Trump with Igor Voskoboynikov, who represented the interests of certain Russian and Ukrainian investors, concerning a project to develop a Trump International Hotel and Tower in Kiev, Ukraine. Trump has been advised by Bayrock Group that certain of the investors indicated that they were familiar with defendants' defamatory statements about Trump and his net worth that appeared in the Book, and that, based at least in part on those statements, they questioned Trump's financial stability and demanded that Trump either contribute additional capital to, or have his name removed from, the project.

The "nature of [Trump's] participation or interest" in the project was to obtain: (i) a licensing agreement; (ii) an ownership stake; and (iii) fees to be paid to the Trump hotel management group for its management of the property. As a result of defendants' defamatory statements, the project was cancelled before an agreement could be reached for any of items (i) to (iii) above.

Interrogatory No. 7

With respect to the Trump Resort in Yalta, Ukraine, identified in a letter from Plaintiff's counsel dated January 10, 2007 as a business opportunity "lost, . . . affected, impaired or interfered with" by Defendants' allegedly defamatory statements:

- a. Identify each person involved in relevant negotiations or other communications relating to the above transaction, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, and other parties to the potential transaction and their employees or agents;
- b. Set forth the specific location of the proposed building or project;
- c. Explain the nature of Plaintiff's participation or interest in the proposed transaction, including but not limited to whether Plaintiff has or would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;
- d. Set forth the amount of money that Plaintiff claims he lost because the transaction was lost, affected, impaired, or interfered with and the full basis for calculating such loss;
- e. Describe the steps taken by Plaintiff or others involved in the transaction in connection with the negotiation or execution of the transaction;
- f. Describe any involvement or influence of any Ukrainian governmental entity or official, whether national or local, in the transaction;
- g. Set forth any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction;
- h. Explain the current status of the transaction;

- i. Set forth the full basis for Plaintiff's belief that Defendants' allegedly defamatory statements affected, impaired, interfered with, or caused the loss of the transaction, including but not limited to identifying any person who informed or suggested to Plaintiff, any Trump-related entity, or any employee or agent of Plaintiff or any Trump-related entity that Defendants' allegedly defamatory statements were a factor in any person's decision regarding the potential transaction;
- j. For each person who Plaintiff believes made a decision relating to the transaction in part because of Defendants' allegedly defamatory statements, identify the decision-maker, set forth the specific defamatory statements that the person relied upon, and explain the nature of the person's reliance on the statements;
- k. Set forth all other factors of which Plaintiff is aware, not relating to Defendants' alleged defamatory statements, which affected, impaired, interfered with, or caused the loss of the transaction;
- l. Identify all communications relating to the negotiation, discussion, or termination of this transaction.

Response to Interrogatory No. 7

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the phrase "steps taken . . . in connection with the negotiation or execution of the transaction" is vague and ambiguous. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible

evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

Tevfik Arif of Bayrock Group engaged in negotiations on behalf of Trump with Igor Voskoboynikov, who represented the interests of certain Russian and Ukrainian investors, concerning a project to develop a Trump International Hotel and Tower in Yalta, Ukraine. Trump has been advised by Bayrock Group that certain of the investors indicated that they were familiar with defendants' defamatory statements about Trump and his net worth that appeared in the Book, and that, based at least in part on those statements, they questioned Trump's financial stability and demanded that Trump either contribute additional capital to, or have his name removed from, the project.

The "nature of [Trump's] participation or interest" in the project was to obtain: (i) a licensing agreement; (ii) an ownership stake; and (iii) fees to be paid to the Trump hotel management group for its management of the property. As a result of defendants' defamatory statements, the project was cancelled before an agreement could be reached for any of items (i) to (iii) above.

Interrogatory No. 8

With respect to the **Trump International Hotel and Tower in Warsaw, Poland**, identified in a letter from Plaintiff's counsel dated January 10, 2007 as a business opportunity "lost, . . . affected, impaired or interfered with" by Defendants' allegedly defamatory statements:

- a. Identify each person involved in relevant negotiations or other communications relating to the above transaction, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, and other parties to the potential transaction and their employees or agents;

- b. Set forth the specific location of the proposed building or project;
- c. Explain the nature of Plaintiff's participation or interest in the proposed transaction, including but not limited to whether Plaintiff has or would have had an ownership stake in the proposed property, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;
- d. Set forth the amount of money that Plaintiff claims he lost because the transaction was lost, affected, impaired, or interfered with and the full basis for calculating such loss;
- e. Describe the steps taken by Plaintiff or others involved in the transaction in connection with the negotiation or execution of the transaction;
- f. Describe any involvement or influence of any Polish governmental entity or official, whether national or local, in the transaction;
- g. Set forth any government approvals or permits that Plaintiff obtained or attempted to obtain for the transaction;
- h. Explain the current status of the transaction;
- i. Set forth the full basis for Plaintiff's belief that Defendants' allegedly defamatory statements affected, impaired, interfered with, or caused the loss of the transaction, including but not limited to identifying any person who informed or suggested to Plaintiff, any Trump-related entity, or any employee or agent of Plaintiff or any Trump-related entity that Defendants' allegedly defamatory statements were a factor in any person's decision regarding the potential transaction;

- j. For each person who Plaintiff believes made a decision relating to the transaction in part because of Defendants' allegedly defamatory statements, identify the decision-maker, set forth the specific defamatory statements that the person relied upon, and explain the nature of the person's reliance on the statements;
- k. Set forth all other factors of which Plaintiff is aware, not relating to Defendants' alleged defamatory statements, which affected, impaired, interfered with, or caused the loss of the transaction;
- l. Identify all communications relating to the negotiation, discussion, or termination of this transaction.

Response to Interrogatory No. 8

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that the phrase "steps taken . . . in connection with the negotiation or execution of the transaction" is vague and ambiguous. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

Trump, Tefvik Arif of Bayrock Group and Janosk Kulczyk engaged in negotiations for a project to develop a Trump International Hotel and Tower in Warsaw, Poland. Trump has been advised by Bayrock Group that Kulczyk expressed concern about Trump, based at least in part on defendants' defamatory statements about Trump and his net worth that appeared in the Book.

The "nature of [Trump's] participation or interest" in the project was to obtain: (i) a licensing agreement; (ii) an ownership stake; and (iii) fees to be paid to the Trump hotel

management group for its management of the property. As a result of defendants' defamatory statements, the project was cancelled before an agreement could be reached for any of items (i) to (iii) above.

Interrogatory No. 9

From January 1, 2002 to the present, for all offers or proposals to license the Trump name for any purpose:

- a. Set forth the date and specific terms of each offer or proposal, including but not limited to the licensing offered or proposed and the amount of the offer or proposal;
- b. Identify each person involved in relevant negotiations or other communications relating to such an offer or proposal, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, as well as the person making the offer or proposal;
- c. Specify the role of each person identified in Response 9(b);
- d. Identify all communications relating to any such offer or proposal, including but not limited to negotiations of any terms thereof;
- e. For each offer or proposal specified in Response 9(a), set forth whether the offer or proposal resulted in a licensing agreement;
- f. For each offer or proposal that did not result in a licensing agreement, set forth all factors as to which Plaintiff is aware as to why not;
- g. For each offer or proposal that did result in a licensing agreement, set forth the date and specific terms of each such agreement;
- h. Explain the current status of all projects planned or currently in development pursuant to a licensing agreement identified in Response 9(e);

- i. For each licensee of the Trump name, specify the date and sum of each payment from the licensee to Plaintiff or any Trump-related entity, as well as the date and sum of each payment by Plaintiff or any Trump-related entity to the licensee;
- j. Identify and attach all documents relevant thereto.

Response to Interrogatory No. 9

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any of the foregoing objections, Trump responds as follows:

Trump refers defendants to the license agreements previously produced to defendants, as well as the license agreements that Trump will produce to defendants.

Interrogatory No. 10

With respect to the Turkish company Yeşil İnşaat or any related entity:

- a. Describe the nature of the relationship between Plaintiff or any Trump-related entity and Yeşil İnşaat or any related entity;
- b. Set forth all licensing or other agreements between Plaintiff or any Trump-related entity and Yeşil İnşaat or any related entity;
- c. Explain the current status of all projects planned or currently in development pursuant to agreements identified in Response 10(b), including but not limited to Trump Plaza, Trump Tower, golf courses, and hotels;
- d. Set forth the specific locations of all projects described in Response 10(c);

e. Explain the nature of Plaintiff's participation or interest in all projects identified in Response 10(c), including but not limited to whether Plaintiff has or would have had an ownership stake, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;

f. Specify all payments that Plaintiff or any Trump-related entity has made to or received from Yeşil İnşaat or any related entity;

g. For each transaction described in Interrogatory Nos. 1 through 8, state whether Yeşil İnşaat or any related entity was involved, and -- if so -- set forth the nature of the involvement;

h. Identify and attach all documents relevant thereto.

Response to Interrogatory No. 10

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

Interrogatory No. 11

With respect to Bayrock Group or any related entity:

a. Describe the nature of the relationship between Plaintiff or any Trump-related entity and Bayrock Group or any related entity;

b. Set forth all licensing or other agreements between Plaintiff or any Trump-related entity and Bayrock Group or any related entity;

c. Explain the current status of all projects planned or currently in development pursuant to agreements identified in Response 11(b), including but not limited to the Trump Soho Hotel Condominiums in New York, the Trump International Hotel and Tower in Fort Lauderdale, the Trump Las Olas Beach Resort in Fort Lauderdale, and a planned development in or near Denver;

d. Set forth the specific locations of all projects described in Response 11(c);

e. Explain the nature of Plaintiff's participation or interest in all projects identified in Response 11(c), including but not limited to whether Plaintiff has or would have had an ownership stake, a licensing agreement, or a management agreement, and the details of any such ownership stake, licensing agreement, or management agreement;

f. Specify all payments that Plaintiff or any Trump-related entity has made to or received from Bayrock Group or any related entity;

g. For each transaction described in Interrogatory Nos. 1 through 8, state whether Bayrock Group or any related entity was involved, and -- if so -- set forth the nature of the involvement;

h. Identify and attach all documents relevant thereto.

Response to Interrogatory No. 11

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

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Interrogatory No. 12

With respect to any offer or proposal by Vornado Realty Trust or any related entity to buy from or sell to Plaintiff or any Trump-related entity any share of the partnership that owns or controls 555 California Street in San Francisco and 1290 Avenue of the Americas in New York, or any offer or proposal by Plaintiff or any Trump-related entity to buy from or sell to Vornado Realty Trust or a related entity any share of that partnership:

- a. Set forth the date and specific terms of each offer or proposal, including but not limited to the amount of the offer or proposal;
- b. Identify each person involved in relevant negotiations or other communications relating to such an offer or proposal, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, as well as employees or agents of Vornado Realty Trust or any related entity;
- c. Specify the role of each person identified in Response 12(b);
- d. Identify all communications relating to any such offer or proposal, including but not limited to negotiations of any terms thereof;
- e. Identify and attach all documents relevant thereto.

Response to Interrogatory No. 12

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

Interrogatory No. 13

With respect to any negotiations or offer between Steve Wynn and Plaintiff or Trump Entertainment Resorts involving the sale, purchase, swap, or other form of transaction involving any of Plaintiff's or Trump Entertainment Resorts' properties, or any proposed partnership between Wynn and Plaintiff or Trump Entertainment Resorts in purchasing, selling, developing, or managing any property:

- a. Set forth the date and specific terms of each offer or proposal, including but not limited to the amount of the offer or proposal;
- b. Set forth the nature of any proposed sale, purchase, swap, partnership, or other form of transaction discussed in each offer or proposal;
- c. Identify each person involved in relevant negotiations or other communications relating to the above, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, as well as Wynn or his employees or agents;
- d. Specify the role of each person identified in Response 13(c);
- e. Identify all communications relating to the above, including but not limited to negotiations of any terms thereof;
- f. Identify and attach all documents relevant thereto.

Response to Interrogatory No. 13

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

Interrogatory No. 14

With respect to any offer or proposal to purchase from Plaintiff or any Trump-related entity the Gossman Estate in Palm Beach, Florida:

- a. Set forth the date and specific terms of each offer or proposal, including but not limited to the amount of the offer or proposal;
- b. Identify each person involved in relevant negotiations or other communications relating to such an offer or proposal, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, as well as the person making the offer or proposal;
- c. Specify the role of each person identified in Response 14(b);
- d. Identify all communications relating to any such offer or proposal, including but not limited to negotiations of any terms thereof;
- e. Identify and attach all documents relevant thereto.

Response to Interrogatory No. 14

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

Interrogatory No. 15

With respect to any offer or proposal -- from January 1, 2002 to the present -- to purchase from Plaintiff or any Trump-related entity 40 Wall Street in New York, New York:

- a. Set forth the date and specific terms of each offer or proposal, including but not limited to the amount of the offer or proposal;
- b. Identify each person involved in relevant negotiations or other communications relating to such an offer or proposal, including but not limited to Plaintiff, any Trump-related entity, and employees or agents of Plaintiff or any Trump-related entity, as well as the person making the offer or proposal;
- c. Specify the role of each person identified in Response 15(b);
- d. Identify all communications relating to any such offer or proposal, including but not limited to negotiations of any terms thereof;
- e. Identify and attach all documents relevant thereto.

Response to Interrogatory No. 15

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As such, the interrogatory is improper.

Interrogatory No. 16

With respect to O'Brien's book reading at Coliseum Books on December 12, 2005 (the "Reading"):

- a. Identify each person known to Plaintiff, or to Plaintiff's employees or agents, who attended the Reading;

- b. Identify each person known to Plaintiff, or to Plaintiff's employees or agents, who recorded the audio or video of the Reading that Plaintiff produced to Defendants on February 1 and 9, 2007 (the "Recordings");
- c. Identify each person known to Plaintiff, or to Plaintiff's employees or agents, who asked O'Brien a question at the Reading or otherwise made a comment captured in any of the Recordings;
- d. For each person identified in Response 16(c), identify the question asked or comment made;
- e. For each person identified in Responses 16(a)-(c), specify the person's relationship with Plaintiff, or with Plaintiff's employees or agents;
- f. Specify what if any financial or other compensation each person identified in Responses 16(a)-(c) received from Plaintiff, or from Plaintiff's employees or agents;
- g. Identify all communications relating to the Reading, including but not limited to those among Plaintiff or Plaintiff's employees or agents and the persons identified in Responses 16(a)-(c);
- h. Identify and attach all documents relevant thereto.

Response to Interrogatory No. 16

Trump objects to this interrogatory on the ground that it is overly broad, unduly burdensome, and oppressive. Trump further objects to this interrogatory on the ground that it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Trump further objects to this interrogatory to the extent it calls for information protected by the attorney-client privilege and work-product. Subject to and without waiving any of the foregoing, Trump responds as follows:

(a) Ignatius Licato, Terry Igneri, Howard Berger, Brendan Finn, and Marc Kasowitz attended the Reading.

(b) Ignatius Licato recorded the video and Terry Igneri, Howard Berger, and Brendan Finn recorded the audio of the Reading that Trump produced to defendants.

(c) Terry Igneri and Brendan Finn asked O'Brien a question during the Reading. Marc Kasowitz spoke with O'Brien after the public question/answer period during the Reading.

(d) Terry Igneri asked O'Brien why he chose to write about Donald Trump. Brendan Finn asked O'Brien whether he wrote the Book to "lambaste" Trump. Trump refers defendants to his Supplemental Response to Interrogatory No. 15 of Defendants' First Set of Interrogatories, provided by letter dated December 19, 2006, for the information relating to Marc Kasowitz.

(e) The persons identified in Response 16(b) above were retained by Trump's attorneys to record the Coliseum Books event.

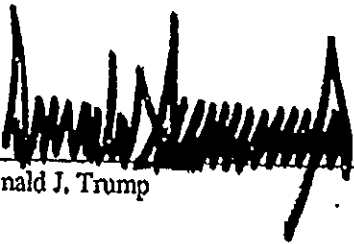
(f) This information is protected by the work-product doctrine.

(g) This information is protected by the work-product doctrine.

(h) This information is protected by the work-product doctrine.

CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT

I hereby certify that the foregoing answers are true and correct. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.


Donald J. Trump

Dated: July 31, 2006

ReedSmith

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February 8, 2007

SUBMITTED UNDER SEAL

Via Electronic Mail and Overnight Mail

Honorable Irvin J. Snyder, J.S.C.
Superior Court of New Jersey
Camden County Hall of Justice
101 South Fifth Street, Suite 470
Camden, New Jersey 08103

Re: Trump v. O'Brien, et al.
Docket No. CAM-L-545-06

Dear Judge Snyder:

We write in response to plaintiff's January 26, 2007 letter to the Court.

Plaintiff's letter claims to have been submitted to "secure a final order memorializing the Court's decision on December 20, 2006 regarding the applicability and scope of the newsperson's privilege to this litigation." (Plaintiff's Jan. 26, 2007 Letter ("Letter") at 1.) But Trump's proposed order has rewritten the Court's rulings in several fundamental ways, including: (1) omitting mention of the Court's stay of the order; (2) omitting mention of the Court's alternative holding on New Jersey law; and (3) mandating production in the proposed order of documents or other information not specified by the Court in its ruling, some of which may be withheld on grounds other than the newsperson's privilege.

The Letter then proceeds essentially to reargue the Court's prior orders regarding the production of Trump's financial information, including the November 3, 2006 Order requiring that Trump produce his 2005 tax return subject only to the redaction of "personal information," an order that Trump has completely disregarded. As the Court knows from its own review on December 20, plaintiff redacted all but 8 numbers from Trump's over 700-page tax return. (Tr. at 106-24 ("Not much on here."), 107-9 to 107-11 ("It's pretty easy to go through when you have all these redactions here.")). However, rather than comply with the Court's ruling (which has now been revisited several times), plaintiff persists in trying to persuade the Court to rescind its Order.

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In addition, the Letter makes the unsupported and baseless claim that Trump has now produced sufficient financial information in this litigation to allow defendants to calculate his net worth. Nothing could be further from the truth. The unredacted financial information Trump has produced to date is insufficient to allow defendants to calculate Trump's net worth, and does not obviate defendants' need for the requested data in Trump's tax returns. Further, based on an analysis of the documents produced to date, defendants will in the coming weeks make specific requests for additional financial information from Trump, his related entities, and third parties in an attempt to secure the information necessary to value Trump's assets and liabilities.

It is worth noting that Trump's reluctance to provide sufficient information to verify his net worth – the core issue in the case – is nothing new. Despite the author's repeated requests for financial information relating to Trump's net worth in connection with the Book, Trump provided him with information that was completely inadequate for estimating Trump's wealth.¹ In effect, Trump cherry-picked the documents that he provided to the author and demanded that he blindly accept Trump's representations regarding his net worth. In the context of this litigation, Trump once again is attempting to cherry-pick the information that he provides, wishing to make himself the arbiter of his net worth as well as what is necessary to calculate it. But in the setting of this litigation, which Trump himself commenced, he cannot provide self-selected documents and ask that defendants – as well as defendants' experts, the Court, and the jury – accept his representations, particularly when the information produced thus far to defendants suggests that Trump's claimed asset valuations are dubious at best.

Accordingly, defendants respectfully request that the Court: (1) enter defendants' proposed form of order; and (2) enforce the Court's November 3, 2006 Order against Trump with respect to his discovery obligations.

The Newsperson's Privilege Decision

After receiving plaintiff's proposed draft order, defendants provided plaintiff with a counter-proposal on January 16, 2007. Consistent with the Court's repeated instructions, defendants invited plaintiff to meet and confer with the goal of "present[ing] the court with an agreed-upon version." Despite several conversations with plaintiff's counsel since that date about other issues, including a conversation on the very day plaintiff's Letter was submitted, at no time did plaintiff propose to discuss the order or otherwise indicate that it would be submitting our proposed orders directly to the Court rather than in the first instance attempting to confer in an attempt to narrow the issues. In other words, plaintiff's reference to "good faith efforts" involved nothing more than the parties' exchanging draft orders, and plaintiff's forwarding of these to the Court without prior notice to defendants.

¹ The documents that Trump has identified in this litigation as having been provided to the author on April 21, 2005 – before the Book was completed – show only Trump's ownership in certain assets, not the financial metrics necessary to value Trump's interest in those properties, and contain almost no information relating to Trump's liabilities. Based upon the information Trump provided, the author could not have known that the estimate of the three anonymous sources was false.

Defendants are now submitting to the Court a proposed order that attempts to accommodate both plaintiff's and defendants' concerns. Had defendants had the opportunity to confer with plaintiff and hear their concerns regarding defendants' proposed order, we would have provided this proposal, which accurately reflects the Court's rulings. In particular, there are five critical defects in plaintiff's proposed order:

First, plaintiff's proposed order omits the Court's clear and unambiguous holding that the Court's discovery order regarding the newsperson's privilege, and defendants' production obligations thereunder, be stayed pending appeal. (Tr. at 80-1 to 80-13 ("So, certainly, I'll stay the requirement that you have to – you're compelled to give that discovery until you've had an opportunity to present the application for interlocutory review.").)

Second, plaintiff's proposal excludes the Court's alternative ruling – which also was clear and unambiguous – that the New Jersey Shield Law, if it applied, would protect from discovery those materials that defendants withheld pursuant to the newsperson's privilege. (Tr. 78-6 to 79-12.) Contrary to plaintiff's suggestion, there is simply no prohibition on including such an alternative ruling in the order, and doing so in no way limits the scope of permissible appellate review.

Third, plaintiff's proposed order specifically identifies numerous categories of documents or information that plaintiff believes defendants must now produce. However, these particular documents and interrogatories were not specified in the Court's ruling, and in many cases, are subject to other objections, such as relevance, attorney-client privilege, and work product doctrine. Identifying specific categories of documents or information that must be produced under this Order would have the effect of overriding those other objections – a result not contemplated by the Court's ruling. In comparison, defendants have proposed a simple and accurate formulation that captures the full scope of the Court's ruling, requiring defendants to produce "all responsive documents or other information previously withheld on the basis of the newsperson's privilege, unless properly withheld on some other basis."

Fourth, plaintiff's proposed language regarding what the New York Shield Law does not protect under the Court's ruling – all sources and materials defendants "relied upon or used in any way in researching, writing, publishing, and promoting *TrumpNation*" – is overbroad and ambiguous.² For example, O'Brien undoubtedly "relied upon" much of his experience as a *New York Times* journalist in crafting the Book, but the Court clearly was not ordering O'Brien to produce the names of confidential sources used for newspaper articles on related topics such as real estate that were not actually used in the Book. At the same time, defendants recognize plaintiff's concerns regarding the use of the term "newsgathering," and therefore propose an alternative formulation that accommodates both defendants' and plaintiff's concerns: "The New York Shield Law does not protect from discovery the documents or other information – including confidential and non-confidential sources – gathered or generated in connection with researching, writing, publishing, or promoting the Book." Defendants also propose

² Plaintiff extensively quotes the Court's discussion regarding the Book's reference to the three anonymous sources. (Letter at 3-4.) However, plaintiff fails to note that the Court explicitly did not rely on the author's characterization of the sources in its decision. (Tr. 74-2 to 74-5 ("No, I'm just telling you that that's not – that's not the basis for my determination, I already told you the basis for my determination.").)

parallel language for the provisions regarding the constitutional, common law, and New Jersey privileges.

Fifth, defendants' proposal that the Court provide 60 days after the Appellate Division resolves any interlocutory appeal regarding this Order for defendants to comply with their production obligations under the Order is perfectly reasonable and well-measured in light of the scope of the materials at issue in this motion, and in light of the amount of time that plaintiff has taken in his own production of documents and interrogatory responses. Indeed, it took plaintiff 69 days to supplement 2 of his interrogatory responses following defendants' objections to his initial responses.

Accordingly, defendants respectfully request that the Court adopt their proposed order relating to the newsperson's privilege.

Plaintiff's Disregard of the Court's November 3, 2006 Order

The Court's December 20, 2006 rulings included several rulings relating to plaintiff's discovery obligations. (Tr. at 107-11 to 108-11, 109-1 to 109-19.) Trump does not seem to contest these rulings, and in fact, he has now produced additional documents from Weiser (many of which were improperly redacted), and provided the names of five deals that he claims were lost as a result of the Book (though Trump notably has failed to provide any support for these claims)³. Nevertheless, under the guise of opposing the portion of defendants' proposed order that addresses these rulings, plaintiff again attempts to reargue the Court's prior tax return ruling. In fact, Trump goes even further, claiming that he has produced "all that defendants need" to calculate his net worth. (Letter at 11.) Each of these arguments should be quickly dismissed.

In its November 3, 2006 Order, the Court ordered Trump to produce his 2005 tax return, subject only to the redaction of "personal information," such as alimony and charitable contributions. But, as

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the Court knows, prior to producing that return one-week late, plaintiff redacted all but 8 numbers, including all financial data on the Schedules C (Profit or Loss from Business), D (Capital Gains and Losses), and E (Supplemental Income and Loss). The Order contained a comparable provision relating to the Weiser documents, permitting only the redaction of "personal information" used in preparing the 2005 tax return. But plaintiff similarly redacted critical financial data in the Weiser production that went well beyond what the Court permitted. For example, Trump fully redacted all of the financial information contained on his 2005 K-1s – the form provided to a partner in a partnership or a shareholder in an S corporation listing the individual's share of income, deductions, credits, etc. – that were within Weiser's possession. Plaintiff's production clearly violated the Court's November 3 Order, which Trump has continued to ignore.

This time, Trump argues that the information he has produced thus far moots his tax return production. He cites, among other things, to a 2003 net worth statement produced by his accountants, Weiser LLP, and to a 2002 New Jersey Casino Control Commission submission. Trump disregards that these financial statements reflect valuations that he himself has assigned to each of his assets. For example, the Weiser net worth statement is a compilation that purports to be "limited to presenting in the form of financial statements information that is the representation of the individual whose financial statements are presented." This compilation – and the Casino Control Commission submission – are neither audited by the accountants nor otherwise opined upon. In addition, the 2003 Weiser net worth statements also identify numerous departures from Generally Accepted Accounting Principles ("GAAP") in their presentation.⁴

Trump also spends five pages describing how he has provided defendants with extensive information on the entities through which he does business, as well as their ownership structure. (Letter at 6-10.) He spends four of these pages listing 143 pass-through entities in which he holds interests. (Letter 7-10.) But identifying the entities through which Trump does business, as well as their ownership structure, is only the first step in valuing Trump's assets and liabilities. By analogy, it is impossible to calculate a baseball player's lifetime batting average simply by knowing the teams for which he played. To value Trump's investments, defendants must understand, among other things, Trump's income from these various entities over time. With regard to certain of his real estate properties, defendants must obtain sufficient information to understand, among other things, their cash flow. Indeed, the list of entities provided in Trump's recent submission to the Court raises more questions than it answers, particularly given that Trump has produced absolutely no financial information for many of these entities.

⁴ In a February 2, 2007 letter to the Court, plaintiff attached (for no apparent reason) a net worth statement prepared by Weiser purporting to reflect Trump's net worth as of June 30, 2006. This net worth statement, like the one referenced by Trump in his January 26, 2007 letter, is only a compilation and not an audited financial statement. Moreover, plaintiff's letter overstates by almost \$1 billion the net worth set forth in the Weiser statement: he claims that the statement provides a net worth of \$4.8 billion, when it actually reflects a net worth of \$4.0 billion. Ironically, in his letter, plaintiff neglected to subtract the outstanding liabilities from the assets and therefore misstated the estimate. Even at that, this shows that Trump inflated his net worth.

While this certainly is not an issue that the Court needs to reach now, there is no basis for Trump's claim that he has produced information sufficient to value his net worth. Based upon a close review of the materials that already have been produced, defendants plan in the coming weeks to request specifically the information that may enable defendants, if Trump and others comply, to determine his net worth. The requested information, which will supplement the information provided in the documents already produced, will be critical for any expert to fully and responsibly engage in the complex endeavor of valuing Trump's assets and liabilities. To take just one example, in order to determine the tax bases of assets held by partnerships or S Corporations, it is necessary to have either tax returns of those entities or financial statements prepared on the income tax basis of accounting. But for nearly all of the partnerships and S Corporations identified in plaintiff's January 26, 2007 letter to the Court, Trump has produced neither the tax returns of these entities nor financial statements on the income tax basis of accounting (or any other basis for that matter).

At the same time, as the Court recognized in its ruling ordering production of Trump's 2005 personal tax return and related workpapers, the 2005 return – in unredacted form – contains information critical to assessing Trump's net worth claim. They are sworn statements and therefore the most reliable source of such information. In addition, there is also specific information in the tax returns which defendants have not obtained from other sources. For example, the tax returns provide information on Trump's income from business assets over time, a critical factor in valuing these assets. We are not aware of any other source for this information.

Moreover, despite Trump's identification of five deals that he claims were lost as a result of the Book, the tax returns also remain relevant to Trump's damages claim. Even though plaintiff has identified these five deals, he has not relinquished his claim of damages to brand name and reputation from the Book, and overall income and financial success are among the main indicia for measuring these intangible factors. Indeed, insofar as plaintiff alleges damages to his brand name, much of the income derived from that brand name is through licensing activities or other business endeavors to which Trump lends his name. To understand whether these business activities have been affected by the Book, it is necessary, among other things, to evaluate the history of these activities as reported on Trump's personal tax returns over time. More specifically, Trump's 2005 tax return identifies approximately 45 Schedule C (Profit or Loss from Business) activities and approximately 22 Schedule E Part I (Income or Loss from Real Estate and Royalties) activities, but plaintiff has redacted from his tax return all financial information for these entities. In the absence of complete tax return data for these activities, it is impossible to evaluate the reasonableness of plaintiff's purported damages to his brand name.

Defendants also object to Trump's redaction of numerous documents from the Weiser production that appear to be important for valuation purposes, and that certainly do not qualify as "personal information" within the meaning of the Court's November 3, 2006 Order. By way of example, Trump fully redacted the financial data contained in his: (1) 2005 Form 1120 for 40 Wall Street (WEI000074133-WEI000074134) (Exhibit B); (2) 2004 cash flows and 2005 income statement for Trump Park Avenue (WEI000080019- WEI000080021, WEI000090162-WEI000090171) (Exhibit C); (3) 2005 K-1 for 845 UN Mgr Corp. (WEI000074143-WEI000074149) (Exhibit D); (4) 2005 trial balance conversion for Trump International Hotel and Tower in Las Vegas (WEI000091572-WEI000091579) (Exhibit E); (5) 2005 tax document for Trump International Hotel and Tower in

Honorable Irvin J. Snyder, J.S.C.
February 8, 2007
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Toronto (WEI000074131-WEI000074132) (Exhibit F); and (6) 2004 disclosure checklist for personal financial statements (WEI000087792-WEI000087795) (Exhibit G).

Furthermore, in certain instances, plaintiff's extensive redactions make it altogether impossible to understand even what plaintiff has redacted. For example, WEI000080104 to WEI000080177 are completely blank pages, except for the markings "REDACTED" and "Confidential" (Exhibit H), and plaintiff's redaction log describes these 74 pages only as involving "Client Workpapers" redacted by reason of "Court Order" (Exhibit I). Indeed, the difficulty of evaluating plaintiff's redactions of the Weiser production is compounded by the patent insufficiency of plaintiff's redaction log, which describes the documents in an extremely generic manner and lists "Court Order" as the "reason" for almost all of the redactions. (See id.) For defendants and the Court to assess the permissibility of plaintiff's redactions, plaintiff must produce a redaction log that contains meaningful descriptions and a clear statement on the basis for each redaction.

In sum, defendants respectfully request that the Court: (1) adopt defendants' proposed form of order, including the stay pending appeal and the Court's alternative finding under New Jersey law; and (2) enforce against plaintiff the Court's November 3, 2006 Order in connection with the 2005 tax return and the Weiser documents, requiring Trump to remove the redactions from all information in these documents that is not truly "personal information" and to produce a redaction log containing sufficient detail to evaluate the permissibility of plaintiff's redactions.

We appreciate the Court's consideration.

Respectfully submitted,


Mark S. Melodia

cc: William M. Tambussi, Esq. (Via Electronic Mail and Overnight Mail)
Mark P. Ressler, Esq. (Via Electronic Mail and Overnight Mail)
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COMMONWEALTH OF PENNSYLVANIA
GAMING CONTROL BOARD

IN RE:

APPLICATION OF HSP GAMING LP	:	DOCKET NO. 1356
APPLICATION OF KEYSTONE REDEVELOPMENT PARTNERS, LLC	:	DOCKET NO. 1364
APPLICATION OF PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT PARTNERS, LP	:	DOCKET NO. 1367
APPLICATION OF PINNACLE ENTERTAINMENT, INC. AND PNK (PA), LLC,	:	DOCKET NO. 1751
APPLICATION OF RIVERWALK CASINO, LP	:	DOCKET NO. 1362
Applications for Category 2 Slot Machine Licenses in Philadelphia, PA a City of the First Class	:	

ADJUDICATION

OF THE PENNSYLVANIA GAMING CONTROL BOARD
IN THE MATTERS OF THE APPLICATIONS FOR CATEGORY 2 SLOT
MACHINE LICENSES IN THE CITY OF THE FIRST CLASS, PHILADELPHIA

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INTRODUCTION

In July 2004, upon the enactment of the Pennsylvania Race Horse Development and Gaming Act ("Act"), 4 Pa.C.S. §1101, et seq. *as amended*, Pennsylvania embarked on an expansive initiative providing for legalized slot machine gaming at a limited number of licensed facilities within the Commonwealth. The primary expressed objective of the legislation is to protect the public through regulating and policing all activities involving gaming. Other objectives include enhancing live horse racing and breeding programs, entertainment and employment in the Commonwealth, providing a significant source of income to the Commonwealth for tax relief, providing broad economic opportunities to Pennsylvania's citizens, developing tourism, strictly monitoring licensing of specified locations, persons, associations, practices, activities, licensees and permittees, considering the public interest of the citizens of the Commonwealth and the social effects of gaming when rendering decisions and maintaining the integrity of the regulatory control of the facilities slots. 4 Pa.C.S. §1102.

The Act establishes the Pennsylvania Gaming Control Board ("Board" or "PGCB") which is comprised of three gubernatorial and four legislative appointee members. 4 Pa.C.S. §1201(b). The Board is provided general jurisdiction over all gaming and related activities, including but not limited to overseeing acquisition and operation of slot machines and issuing, approving, renewing, revoking, suspending, conditioning and denying slot machine licenses. 4 Pa.C.S. §1202.

Three categories of slot machine licenses are authorized under the Act: Category 1 licenses permitting up to seven qualifying licensed horse racetracks to maintain slot machine facilities; Category 2 licenses permitting up to five stand-alone slot machine

locations in metropolitan or other tourism areas; and Category 3 licenses permitting up to two hotel-resort slot machine facilities. 4 Pa.C.S. §§1301-1307.

The Act sets forth essential eligibility criteria for each Category of license which any license applicant must satisfy simply to proceed to consideration of its application. With respect to Category 2 licenses, which are the subject of this adjudication, Section 1304 of the Act provides the eligibility criteria including that the applicant may not be eligible for a Category 1 license and that the locations for the Category 2 facilities include two facilities in a city of the first class, one facility in a city of the second class and the remaining two facilities in a revenue or tourism-enhanced location. Further, for each of these facilities, the Act sets specific distance requirements with respect to Category 1 and other Category 2 facilities. 4 Pa.C.S. §1304. The Act also imposes eligibility criteria on all applicants for all Categories which include the development and implementation of a diversity plan to assure equal opportunity in employment and contracting, as well as a requirement that the applicant be found suitable consistent with the laws of the Commonwealth and otherwise qualified for licensure. 4 Pa.C.S. §1325. Other sections of the Act impose further restrictions on who may or may not be issued licenses including imposing good character, honesty and integrity requirements upon applicants, and requiring letters of reference from law enforcement and other casino jurisdictions where the applicant may be licensed, 4 Pa.C.S. §1310; imposing business restrictions on who may own, control or hold key positions for the applicant, 4 Pa.C.S. §1311; requiring divestiture of interests on non-qualifying persons, 4 Pa.C.S. §1312; imposing strict financial fitness requirements on the applicants to assure the financial and operational viability of the proposal, 4 Pa.C.S. §1313, and promoting and ensuring

diversity in all aspects of the gaming activities permitted under the Act including through the ownership, participation and operation of licensed facilities. 4 Pa.C.S. §1212.

In addition to the eligibility criteria, the Act provides extensive guidance for the Board's consideration in issuing licenses. Section 1325(c)¹ - Additional requirements, provides:

In addition to the eligibility requirements otherwise provided in this part, the board may also take into account the following factors when considering an application for a slot machine license:

- (1) The location and quality of the proposed facility, including, but not limited to, road and transit access, parking and centrality to market service area.
- (2) The potential for new job creation and economic development which will result from granting a license to an applicant.
- (3) The applicant's good faith plan to recruit, train and upgrade diversity in all employment classifications in the facility.
- (4) The applicant's good faith plan for enhancing the representation of diverse groups in the operation of its facility through the ownership and operation of business enterprises associated with or utilized by its facility or through the provision of goods or services utilized by its facility and through the participation in the ownership of the applicant.
- (5) The applicant's good faith effort to assure that all persons are accorded equality of opportunity in employment and contracting by it and any contractors, subcontractors, assignees, lessees, agents, vendors and suppliers it may employ directly or indirectly.
- (6) The history and success of the applicant in developing tourism facilities ancillary to gaming development if applicable to the applicant.
- (7) The degree to which the applicant presents a plan for the project which will likely lead to the creation of quality, living-wage jobs and full-time permanent

¹ The Section 1325(c) factors are factors which the Board may take into consideration in determining whether the grant of a license is in the public interest or otherwise in accordance with the objectives of the Act. In addition, and more important to the Category 2 licenses where competition exists, the 1325(c) factors permit a basis for comparison of applicants to determine, in the Board's discretion, which applicants' projects are best-suited for the licenses.

jobs for residents of this Commonwealth generally and for residents of the host political subdivision in particular.

(8) The record of the applicant and its developer in meeting commitments to local agencies, community-based organizations and employees in other locations.

(9) The degree to which potential adverse effects which might result from the project, including costs of meeting the increased demand for public health care, child care, public transportation, affordable housing and social services, will be mitigated.

(10) The record of the applicant and its developer regarding compliance with:

- (i) Federal, State and local discrimination, wage and hour, disability and occupational and environmental health and safety laws; and
- (ii) State and local labor relations and employment laws.

(11) The applicant's record in dealing with its employees and their representatives at other locations.

In light of the comprehensive nature of the General Assembly's directed regulation, the Board set a deadline of December 28, 2005, for applications for all three categories of licenses.² By this deadline, the Board received five applications for the two available Category 2 licenses in Philadelphia (the city of the first class).

With respect to these five (5) Category 2 applications, the Board, through its respective Bureaus of Licensing, Investigation and Enforcement, and Corporate Compliance and Internal Controls, engaged in extensive review and investigation. The Board conducted three (3) days of public input hearings on April 10, 2006, April 11, 2006 and April 12, 2006, during which each of the five applicants made presentations and during which one hundred eighteen (118) individuals, including members of the community, spoke either in favor of or in opposition to gaming and the proposed projects.

² See www.pgcb.state.pa.us/press/pr_112805.htm

In addition, during the public comment period, the Board received a combined three-hundred eight (308) written comments relating to the proposals from the public.³ The Board placed large amounts of information about the projects on its website⁴, and conducted final licensing hearings on November 13-15, 2006, for the Philadelphia applicants.⁵

The applicants before the Board for the two available Category 2 licenses in Philadelphia are: 1) HSP Gaming LP, also referred to as Sugarhouse; 2) Keystone Redevelopment Partners, also known as TrumpStreet; 3) Philadelphia Entertainment and Development Partners, also known as Foxwoods; 4) PNK, Pinnacle Entertainment and 5) Riverwalk Casino. The authority for these licenses arises under Section 1304 of the Act. Because the Act only permits two licenses to be awarded in Philadelphia and there are five applicants, there is competition among the applicants for the two available licenses. Because of this competitive factor, the five applicants not only have the responsibility to satisfy the Board that they are eligible and suitable for a Category 2 license, but they also have been required to convince the Board that their respective project should be among the two chosen by the Board to best serve the Commonwealth's and the public's interests in Philadelphia. Ultimately this is a determination committed to the sound exercise of the Board's discretionary authority to select the two applicants which the Board believes will best serve the Commonwealth's and the public's interests as outlined in the Act.

3 See www.pgcb.state.pa.us/hearing_comments.htm

4 See www.pgcb.state.pa.us/report_hearing.htm

5 See www.pgcb.state.pa.us/press/pr_101106.htm

On December 20, 2006, the Board met during an open, public meeting in accordance with the requirements of the Commonwealth's Sunshine Act, 65 Pa.C.S. Chapter 7, and Section 1206 of the Act for the purpose of voting upon all pending applications and approving all permanent Category 1 and 2 licenses after consideration of all of the applications, collectively and together in a comprehensive, Statewide manner.

In addition to the Act's eligibility criteria under Sections 1304 and 1310-1313, factors which the Board took into consideration when reviewing these applications are those defined in Section 1325 of the Act as listed above. The Board fully considered these factors as applicable to arrive at a decision on licensure based upon all of the evidence in the record before it. The Board considered all of the evidence which makes up the evidentiary record in this case, received briefs and heard oral argument supporting the applications, where presented, and has had the opportunity to question applicants about their proposals.

In addition, throughout the entire licensing and investigative process, the Board reached out to various federal, state and local law enforcement agencies, including the FBI and the Pennsylvania State Police, requesting any information in the possession of those agencies related to the suitability of the applicants in order to assure that the Board had obtained all information relevant to each applicant's suitability for licensing. Those agencies have not provided the Board with any information which would preclude the applicants from being considered for a license.

Based upon each Board member's comprehensive evaluation of all information obtained throughout the entire licensing and investigative process and contained in the evidentiary record, the Board collectively engaged in quasi-judicial deliberations in

executive session during which it met to fully and frankly discuss the merits of each of the applicants and their proposed projects.

Each of the five Category 2 Philadelphia applicants has presented the Board with a solid, competent proposal for the construction and operation of a first-class casino in Philadelphia, each of which are eligible and suitable for licensure under the terms of the Act. Unfortunately, the Board is constrained by the Act only to issue two licenses in Philadelphia. Those applicants not awarded a license have, under the mandates of the Act, been denied a license. The Board emphasizes the point that the denials of three applicants are not because the unsuccessful applicants were found unsuitable, but because the Board had the difficult task of choosing among five suitable candidates and proposals, each of which possessed various positive attributes. Simply stated, the successful applicants were the applicants which possessed the projects which the Board evaluated, in its discretion, to be the best projects for licensure under the criteria of the Act.

During its December 20, 2006 public meeting, the Board voted to approve two Category 2 licenses in Philadelphia, for HSP, Sugarhouse and Philadelphia Entertainment and Development Partners, Foxwoods, pursuant to terms and conditions to be imposed by the PGCB. Concurrently, the Board voted that the remaining three applications for a Category 2 license in Philadelphia, those being Keystone Redevelopment Partners/TrumpStreet, PNK, Pinnacle Entertainment, and Riverwalk Casino are denied as not having achieved a qualified majority of support for licensure as defined in the Act and because the City of Philadelphia is limited to only two Category 2 licenses. See Sections 1301 and 1304 of the Act.

The following Findings of Fact and Conclusions of Law set forth the Board's rationale for this determination.

FINDINGS OF FACT

General Findings Applicable to All Philadelphia Applicants

1. All five applicants have applied for a slot machine license to operate a slots casino in the City of Philadelphia, a city of the first class.
2. The initial applications from the Philadelphia applicants seeking a Category 2 slot machine license were received by the Board on December 28, 2005.
3. None of the five (5) applicants proposed locations were located within ten (10) linear miles or less of an existing Category 1 racetrack facility.
4. The Bureau of Licensing then put each application package through a detailed completeness review. This process involved scrutinizing each and every question asked and each answer provided to determine if the answers and documentation were fully responsive. Where deficiencies were detected, requests for more information, documentation and additional applications were made of the applicant. As the new information and applications arrived they were again put through the completeness review process and deficiencies identified.
5. This gathering of information and documentation was ongoing throughout the ten months prior to the applicants' suitability hearings.
6. Once the Bureau of Licensing determined it was sufficiently satisfied with the core contents of the initial applications, the applications were given to the Bureau of Investigations and Enforcement ("BIE") and the Bureau of Corporate Compliance and Internal Controls for the character and financial suitability investigations.

7. BIE reviewed and inspected the applications to identify any inconsistencies and to develop a general familiarity with the overall business activity, financial situation and history of the applicant, developed investigative plans that would be utilized to conduct the background investigations of each applicant and put those plans into action.

8. Requests for information to numerous organizations and agencies were made. Criminal history checks were requested through the Pennsylvania State Police which included queries of the Federal Bureau of Investigation's National Crime Information Center databases for criminal history and wanted person information. Further queries into criminal history records were conducted by BIE utilizing accessible databases and through direct contact and/or correspondence with local law enforcement agencies having jurisdiction over the current and former locations of the businesses associated with the applicant and residences of the natural persons included in or related to the application. Additionally, the Pennsylvania Office of Attorney General, Executive Offices of the Pennsylvania State Police, several United States Attorney Offices and Federal Bureau of Investigation Offices were contacted with respect to each applicant in order to ascertain whether any concerns existed as to the licensure of any particular applicant. In addition to the required Pennsylvania state tax clearance review conducted by the Department of Revenue and the Department of Labor and Industry, requests for tax clearance reviews were sent to other applicable federal, state and local jurisdictions. Additional verifications were made as well such as passports being verified through the United States Department of State and bank accounts, loans, lines of credit, safe deposit box ownership, etc. verified with financial institutions.

9. BIE also conducted database searches, utilizing, among others, commercial databases such as Screening Network, Accurint/Relavint, Lexis/Nexis, Choicepoint Comprehensive Report, and Auto Track XP to identify and verify the employment, family, residence and educational histories of each applicant, as well as their non-gaming and professional license status, civil litigation dockets and credit histories. The results and findings of these database checks were then compared against each other and to the information contained in the application materials.

10. Contact was made with other gaming regulators concerning the applicants and the natural persons associated with the applicants in order to verify gaming licensure and licensure status.

11. Extensive personal interviews were conducted by BIE agents with applicants and their natural person qualifiers during which investigators gathered extensive amounts of information concerning these entities and individuals and their businesses and personal histories.

12. Investigation of each applicants' finances in order to assess financial suitability was conducted jointly by BIE and the Bureau of Corporate Compliance and Internal Controls. The role of BIE was to verify the data upon which these reports were based. The Bureau of Corporate Compliance and Internal Controls personnel created the financial fitness report.

13. A Financial Suitability Task Force was established with professional members from the Bureau of Corporate Compliance and Internal Controls, as well as professional consultants retained as part of that Task Force. The Task Force developed

the process for the determination of financial suitability of the applicants. The process entailed extensive document review.

14. The Financial Suitability Task Force established the following criteria in order to determine Financial Suitability for each applicant. Criteria 1 being an applicant's financial track record examining past financial performance and financial risk profile; Criteria 2 being an Individual Analysis; and Criteria 3 being the financial wherewithal of an applicant which included project funding and each applicant's ability to grow and maintain revenue.

15. The Bureau of Corporate Compliance and Internal Controls collected extensive information from each applicant which included corporate information for the applicant and any other related entities and individual information where applicable.

16. Based on the process designed and the information collected, the Task Force prepared the Financial Suitability Report with supporting documentation consisting of: 1) Corporate Financial Analysis; 2) Corporate Structure Analysis; 3) Debt Structure Recap; 4) Drive Time Market Analysis; and 5) Project Financial Overview.

17. A drive-time analysis was conducted for each applicant. A drive-time analysis is a proven method which has been used extensively over a number of years in the major gaming markets to estimate potential gaming revenues. The drive-time analysis is used to estimate the potential gaming revenue of a gaming facility on the basis of a set of assumed conditions. It takes into consideration the expected level of spending at the proposed facility by adults living in various zones around a proposed site location, with the zones primarily defined in terms of the amount of time it takes to drive to the proposed site and the assumed surrounding competition. The drive-time is based on a

typical facility and does not include consideration of the specific site, access, physical characteristics or management, operational or marketing capabilities of the applicant or any other applicant in Pennsylvania.

18. The Task Force conducted a drive-time analysis for each applicant's proposed facility to: (1) estimate the gaming revenues of the applicant's proposed facility for a stabilized year of operation, which was used because of added comparability (for clarification, the stabilized year takes place once the permanent facility is open and has ramped up and is moving into a steady state of operation, and it also takes into account assumed competition from other relevant gaming facilities); (2) provide a basis for the Board to evaluate the applicant's gaming revenue projections; and (3) analyze the applicant's long-term view of the market.

19. The drive-time analyses were based on win and visitation analyses for each applicant's proposed facility. The visitation analyses were conducted by dividing the surrounding area into various zones and analyzing the following three critical factors for each zone: (1) Adult Gaming Propensity, which is an estimate of the likelihood of a resident of an area to visit a particular facility in a given year based upon gaming industry data. The gaming propensity depends upon a number of factors including: access and drive-time, proximity to existing and proposed competitive gaming facilities, availability of other leisure activities, and availability and type of transportation to the proposed facility; (2) Annual Frequency of Visits, which is an estimate of how often a resident of a given area visits a particular facility in a year; and (3) Average Trip Expenditure, which is an estimate of the spending propensity of a visitor during a trip to a given facility.

20. Public Input Hearings were conducted by the PGCB on April 10, 11 and 12, 2006, at Drexel University in Philadelphia, Pennsylvania. Numerous representatives from all five applicants testified at the hearing on behalf of their respective proposals. All interested groups and individuals wishing to speak at the meeting concerning the five proposals were given the opportunity.

21. The Board also provided a written public comment period that closed on June 2, 2006.

22. Along with the written comments received by the Board specific to each applicant, the Board also received one hundred and six (106) comments addressing the building of any casino in Philadelphia with five (5) supporting casinos in Philadelphia and one hundred and one (101) opposing any casino in Philadelphia. Forty-six (46) comments were also received addressing gaming in general, neither supporting nor opposing any specific project in Philadelphia.

23. The Board's regulations at 441.19(y) provide a mechanism for persons wishing to intervene in any licensing hearing for a slot machine license if that person has an interest in the proceeding which is substantial, direct and immediate and if the interest is not adequately represented in the hearing. 58 Pa. Code 441.19(y).

24. The Board did not receive any petitions to intervene in any licensing hearing of a Philadelphia applicant.

25. On November 13, 14 and 15, 2006, all applicants were provided final hearings during which they were permitted to present witnesses to provide sworn testimony and documentary and demonstrative evidence as each applicant deemed appropriate to attempt to convince the Board that it should be awarded one of the two

Category 2 licenses in Philadelphia. PGCB Regulation 441.19, Licensing hearings for slot machine licenses, provided the procedural framework for those hearings. 58 Pa. Code §441.19.

26. Pursuant to PGCB regulation 441.19(o), 58 Pa. Code §441.19(o), applicants were provided the opportunity to also present evidence during their own hearing to and concerning their competitors in order to demonstrate that their own project should be selected rather than the project of a competing applicant. All applicants who desired to present comparative evidence were required to notify the other applicants of that intent and provide notice of the evidence to be presented in order to permit all applicants to respond to any comparative evidence.

27. Each applicant was also provided the opportunity to provide a written brief to the Board by December 8, 2006, after the completion of the suitability hearings for all five applicants. The Board received a brief from all applicants except HSP, which waived briefing.

28. On December 19, 2006, the Board provided the five applicants the opportunity to provide oral argument before the Board and all applicants participated.

29. Each applicant, as part of its application, submitted a traffic study prepared by a professional firm retained by the applicant for the purpose of analyzing traffic issues associated with the proposed project and proposing traffic and roadway modifications to alleviate traffic problems associated with increases in traffic which the proposed casino would create.

30. Pursuant to an interagency agreement with PennDOT, which had an existing contract for traffic engineering services with the engineering and planning firm

of Edwards & Kelcey, the Board engaged Edwards & Kelcey to review traffic study plans submitted by each Category 2 applicant in Philadelphia and to provide a responsive independent report concerning the traffic studies and proposed mitigation measures and modifications to address increased traffic concerns.

31. The Edwards & Kelcey reports were provided to each respective applicant for review and further comment and discussion.

32. Each applicant had the opportunity to submit additional materials, supplementations and proposals to address concerns raised by Edwards & Kelcey concerning traffic issues.

33. Edwards & Kelcey prepared a final report again analyzing the applicants' proposals which were provided to the applicants prior to the final hearings and to which the applicants were permitted to respond during their final hearings.

34. The Edwards & Kelcey reports and the applicants' responses were submitted and admitted as exhibits in the respective applicants' final hearings.

35. The Act permits the Board to issue only two licenses in a city of the first class, *i.e.* Philadelphia.

36. No applicant filed any written objection to the Board's docket, or raised any objection orally or in writing to the Board during the course of its hearing, relating to the procedure utilized by the Board for the conduct of the hearing process generally or to any particular allegation of error.

37. On December 20, 2006, during a public meeting, the Board voted unanimously to award HSP, Sugarhouse and Philadelphia Entertainment and Development Partners, Foxwoods the available licenses in Philadelphia, a city of the

first class, thereby denying the applications of Keystone Redevelopment Partners/
TrumpStreet; PNK, Pinnacle Entertainment and Riverwalk Casino.

HSP GAMING, LP /SUGARHOUSE ("HSP")

38. The HSP project site encompasses 22 acres along the Delaware River. Planned as a phased gaming facility, HSP does not propose a temporary facility, but instead plans the initial construction to be an "interim facility" that will become fully integrated into the Phase 1 facility as its core section. The interim facility is projected to open within twelve (12) months of licensure and house 1,500 slot machines, related gaming support and regulatory spaces, a food court and a ten-level self park facility with 2,404 spaces located at the north end of the site.

39. HSP commits to add to this core structure to reach completion of its first phase, which will be named Sugar House, to accommodate up to 3,000 slot machines, additional restaurants and a 6,000 square-foot multi-use event center with related support areas. The completed Phase I will encompass 1.5 million square feet of new construction, with 84,600 square feet of gaming space at a cost of \$550 million. This permanent casino structure has been designed as a two-story podium structure with a contemporary design and a retro feel, built to attract a sophisticated market competitive with the best in Atlantic City.

40. Future phases of the project complete an expansion of the complex to ultimately accommodate the statutory limit of 5,000 slot machines, a 500 room hotel tower, expanded dining facilities, a spa and an expanded garage parking. Should all phases be completed, HSP's facility would exceed 3,000,000 square feet of new construction.

41. At the Public Input Hearing, two (2) Legislators testified with one (1) supporting the proposal and the second neither supporting nor opposing the project. Three (3) representatives of local government units testified with one (1) supporting the project while the other two (2) took neutral positions. Twelve (12) representatives of Community Groups testified with six (6) supporting the proposal and six (6) stating they were neither for nor against the project, but had some questions or concerns. Ten (10) individuals testified with six (6) supporting the project, two (2) opposing the project and two (2) requesting more time to analyze certain aspects of the proposal.

42. In addition, by the June 2, 2006 deadline, the PGCB received twenty-two (22) written comments specific to the HSP project, with seven (7) supporting the project and fifteen (15) opposing the project.

43. Those speaking or providing written comments in support cited reasons such as increased job opportunities, added revenue, being good for the economy, tax relief, strengthening the marketing of Philadelphia and community partnerships and the amenities that the project offered.

44. Those speaking or providing written comments in opposition cited reasons such as traffic congestion, historical impacts, noise and street pollution, destruction of the riverfront, crime, public safety and not enough EMT's and police.

45. On November 13, 2006, the PGCB conducted a public suitability hearing for the purpose of hearing additional testimony and evidence from HSP concerning its application and proposed project and its eligibility and suitability for licensure pursuant to the Act.

46. In addition to the public hearings, substantial time reviewing, analyzing and investigating the applications and various submissions was expended by the PGCB's Bureau of Licensing in processing and reviewing the application, the Bureau of Investigations and Enforcement investigating HSP, its affiliates and key employee/qualifiers and the Bureau of Corporate Compliance and Internal Controls, along with the Financial Suitability Task Force investigating HSP's financial suitability.

47. The application for a Category 2 license filed by HSP is complete, all fees and costs which have been billed to HSP have been paid as required, all required bonds and/or letters of credit were posted and HSP and its affiliated parties consented to and have undergone background investigations as required by the Act.

48. HSP is a limited partnership formed in December 2005 for the purpose of applying for a Category 2 license. HSP is not an active business, but is in the advanced stages of developing plans to build its proposed facility.

49. HSP's primary ownership is comprised of High Penn Gaming, LP which owns 66.25%, HP Gaming Partners, LP which owns 0.1% and RPRS Gaming, LP, which owns 33.65%.

50. Ownership of these entities is comprised of limited partnerships, limited liability companies and trusts which include High Penn Gaming, LLC, RPRS Gaming, LLC, RMP Gaming, LP, 2005 AAA Trust and the Bluhm Family Trusts. Individuals who have significant ownership interest in these entities include Neil Bluhm, Gregory Carlin, Meredith Bluhm-Wolf, William Lamb and Robert Potamkin.

51. HSP's diversity of ownership is limited because of the existing ownership structure dominated by limited partnerships. The limited partnerships establish diversity

of ownership through the individual investors in and owners of affiliated entities with ownership interests in HSP.

52. The following entity qualifiers, affiliate qualifiers and key employee/qualifiers of HSP consented to and have undergone required background investigations: HSP, High Penn Gaming, LP, HP Gaming Partners, LP, RPRS Gaming, LP, High Penn Gaming, LLC, RPRS Gaming, LLC, RMP Gaming, LP, RMP Gaming, LLC, 2005 AAA Trust, Neil G. Bluhm Family Descendants Trust, 2002 LNB Family Dynasty Trust, Meredith A. Bluhm-Wolf 2006 Family GST Trust, 2002 AGB Family Dynasty Trust, Lamb Partners, LAMB Company, LLC, Neil G. Bluhm, Andrew G. Bluhm, Leslie N. Bluhm, Gregory Carlin, William H. Lamb, Richard A. Sprague, Daniel J. Keating III, Robert M. Potamkin, Meredith Bluhm-Wolf, Jerry Johnson, Thomas Sprague, Barbara A. Sprague, Peter D. DePaul, Lexie Brockway Potamkin and ten (10) minor child beneficiaries.

53. Alternative licensing standards were not utilized by the Board during the course of its investigation of HSP.

54. Neither HSP, nor any person affiliated with HSP, is a party to any ongoing civil proceeding seeking to overturn a decision or order of the PGCB or the Thoroughbred or Harness Racing Commissions.

55. HSP does not possess any ownership or financial interest in any other slot machine licensee or person eligible to apply for a Category 1 license, its affiliate, intermediary, subsidiary or holding company.

56. Neither HSP, nor any affiliates, intermediaries, subsidiaries or holding companies, hold any interest in a supplier or manufacturer license.

57. No public official is a key employee/qualifier or has any prohibited financial interest in, or is employed by HSP or any related entity.

58. Two key employee/qualifiers, Daniel Keating and Peter DePaul, made political contributions that appeared to be in violation of the Act. Mr. Keating had filed his application on December 28, 2005 and a contribution of \$250 was made on December 29, 2005. Mr. Keating and the Board entered into a consent decree to address the issue, with Mr. Keating obtaining the return of the contribution and HSP and Mr. Keating paying a fine. Mr. DePaul made significant political contributions after filing his application and in order to remedy this he divested his interest in HSP and withdrew as a key employee/qualifier of HSP. The Board approved this withdrawal by Mr. DePaul from HSP's application.

59. Investigation did not reveal that HSP or any other affiliates or key employer/qualifiers made any political contributions of any kind in violation of the Act.

60. HSP satisfied all local, state and federal tax obligations.

61. Investigation did not reveal that HSP or any of its affiliates, directors, owners or key employee/qualifiers have been convicted of a felony or a gambling offense in violation of the Act.

62. Investigation did not reveal any information that would indicate that HSP or any of its affiliates, directors, owners or key employee/qualifiers is of unsuitable character.

63. Information gathered during the course of BIE's investigation concerning HSP and its affiliates, directors, owners and key employee/qualifiers did not reveal any adverse information concerning bankruptcies, civil lawsuits or judgments, criminal

convictions, past activities or business practices, business associates or dealings or any other information concerning the honesty, integrity, family, habits or reputation that would prohibit licensure of HSP or its key employee/qualifiers.

64. The PGCB Financial Suitability Task Force performed an evaluation of HSP's financial fitness and suitability and did not find anything financially material that would preclude HSP from obtaining a Category 2 slot machine license.

65. The PGCB Financial Suitability Task Force projected a revenue estimate for HSP of approximately \$310.8 million annually in a stabilized year in 2005 dollars, with a win per position of \$284 per day at 3,000 machines.

66. HSP projected its revenue at an estimated \$320.3 million annually in a stabilized year in 2005 dollars, with a win per position of \$292 per day at 3,000 machines.

67. HSP's estimate was 3.0% higher than the estimate of the PGCB Financial Suitability Task Force.

68. HSP indicated and investigation revealed that it has the ability to pay the \$50 million licensing fee and to post the \$1 million bond required when the Category 2 slot machine license is issued.

69. Based upon representations by HSP and investigation by the PGCB Financial Suitability Task Force, HSP is capable of maintaining a financially successful, viable and efficient business operation which will maintain a steady level and growth of revenue.

70. HSP principals Neil Bluhm and Dan Keating have experience developing, constructing and managing casinos, including two casinos in Canada. HSP does not have any interest in any casino located in Atlantic City, New Jersey.

71. HSP has a Diversity Plan in place addressing and assuring, in good faith, equality of opportunity in employment and contracting, diversity in groups providing goods and services to HSP and a plan to recruit, train and update diversity in all employment classifications at its facility.

72. HSP has retained Maven, Inc. to assist with public relations and in the implementation of its Diversity Plan. Maven is experienced in the development and implementation of Diversity Plans and is itself a minority owned business. Melonease Shaw, its Chairman and CEO, has 30 years experience in enterprise management with an emphasis on the needs of woman and minorities.

73. HSP submitted a Compulsive and Problem Gaming Plan with its application, but the plan requires amendment as it does not fully address all criteria for development, employee training items, self-exclusion training and underage gambling. However, the plan does express HSP's intent to comply with the Act's signage requirements. The status of this plan does not exclude a finding of eligibility and suitability at this time.

74. HSP's planned location consists of 22-acres along the Delaware River waterfront located between Shackamaxon and North Ellen Streets, on Columbus Blvd. just north of the Ben Franklin Bridge and near Interstate 95. Primary access to the site will be via Columbus Blvd from I-95.

75. The planned interim facility will include a 150 seat food court, a 125 seat restaurant, a 35 seat casino bar and an 80 seat entertainment lounge, along with the gaming floor with 1,500 slot machines. HSP is committed financially to building this interim phase.

76. The full phase one facility will include a 460 seat buffet/diner combination, a 135 seat Italian restaurant, a 150 seat steak house, a 60 seat bar, a 250 seat sports bar, a 100 seat Off Track Betting facility and lounge with a 6,000 square foot multi-purpose ballroom and retail space, along with a gaming floor with 3,000 slot machines. HSP is committed financially to building phase one. The cost of both the interim and permanent first phase is \$550 million.

77. Phase two, if built, would include a 500 room luxury hotel, spa, multi-purpose event center and additional restaurants and lounges. While HSP fully expects this phase to be completed, it's completion will be dependent upon the success of Phase One.

78. The existing site is a currently vacant, underutilized former industrial property. The majority of the site has been vacant since 1980 and was previously used by the Jack Frost Sugar Company as a sugar refinery, packaging and distribution center. All buildings on the site have been demolished and removed.

79. The area around the HSP project consists of a mixed land use of industrial, commercial and limited residential development. Properties north of the project site contain commercial/industrial businesses and warehouses. Properties south and west of the project include a mix of new residential condominium towers that are currently under construction, residential town homes and bar/restaurant establishments.

80. The project site is within two (2) miles of other Philadelphia attractions such as Penn's Landing, Independence Hall and Park, the Constitution Center, the Ben Franklin House and Museum, Elfreth's Alley and numerous restaurants, pubs and the Reading Terminal Market.

81. A portion of the proposed site is located in a C-3 District, but the majority of the site is zoned G-2 Heavy Industrial. As a result, the site has multiple zoning classifications with the C-3 use reasonably analogous to the sought gaming use. The City of Philadelphia has adopted an ordinance that has created a "Commercial Entertainment District" which, among other things, permits licensed gaming facilities. To date, the City has not indicated which areas will be designated as Commercial Entertainment Districts as it is waiting to see which applicants are licensed by the PGCB.

82. HSP does not own the riparian rights along this portion of the riverfront. However, it is confident that it will secure those rights and if it is not successful the design of the project could be changed to accommodate the lack of riparian rights.

83. HSP estimates that its interim facility will provide approximately 586 jobs and the completed Phase One proposal will create a total of 1,091 living wage jobs paying an average of \$12.24 per hour with healthcare benefits and a 401(k) plan.

84. HSP estimates that the entire project will create approximately 1,000 construction jobs as the phases are built.

85. The record indicates that HSP and its affiliates and entity qualifiers have favorable records of compliance with applicable federal, state and local discrimination, wage and hour, disability and occupational, environmental health and safety, and labor

relations and employment laws and favorable records in dealing with employees and their representatives.

86. HSP does not intend to use a management company to operate the casino. HSP employs various individuals with business and gaming experience.

87. Neil Bluhm, is a co-founder and currently serves as the Chairman of the Board of Falls Management Company ("FMC"). In 1998, FMC was selected by the province of Ontario to assume the management contract for Casino Niagara and to develop and manage Niagara Fallsview Casino Resort. Mr. Bluhm is also one of the founders and President of JMB Realty Corporation and founding principal of Walton Street Capital. JMB, along with its associated entities, is engaged in real estate investment and development. In the aggregate, JMB and Walton Street have acquired in excess of \$25 billion of real estate.

88. Daniel J. Keating III, Chairman and CEO of the Keating Group, a multifaceted construction and real estate development company founded in 1976, developed and constructed a wide variety of institutional projects valued at over \$7 billion dollars totaling more than 500 projects. With Mr. Keating's oversight, his company has served as the general contractor to many large casino projects including the Tropicana Havana Tower and Quarter in Atlantic City and Bally's Wild West Casino in Atlantic City.

89. The Chief Executive Officer of HSP will be Gregory Carlin. Mr. Carlin has eleven (11) years of gaming industry experience.

90. HSP has also hired Robert D. Sheldon to serve as President and Chief Operating Officer. Mr. Sheldon most recently served as Chief Operating Officer of

Foxwoods Resort and Casino in Mashantucket, Connecticut where he was employed for six (6) years. Prior to that, Mr. Sheldon worked for Steve Wynn for eleven (11) years, most recently as President of the Golden Nugget Hotel Casino, a Mirage Resorts Inc. property in Las Vegas, Nevada.

91. In addition, during the construction phase, HSP will retain the services of entities familiar with developing and building casino projects including Keating Building Corporation and Cope Linder Architects.

92. HSP has also retained Lewin International, LLC as a gaming consultant. Its principal, Larry Lewin, is a thirty (30) year veteran of the casino and hotel industry and has previously worked closely with Mr. Bluhm and Mr. Carlin on other gaming projects. Mr. Lewin's responsibilities included the development and opening of several major gaming properties, including Niagara Fallsview Casino Resort in Ontario, Canada.

93. Joann Weber has been hired as a human resources consultant. Ms. Weber has been involved in the casino industry for twenty-three (23) years, most recently as a Senior Vice President for Human Resources with Foxwoods whom she worked for eight (8) years.

94. Debbie Marchese has been retained by HSP to serve as a consultant in the area of casino financial operations and reporting. Ms. Marchese is currently Vice-President of Finance and Information Technology and Chief Financial Officer of Tropicana Casino and Resort in Atlantic City, New Jersey, where she is responsible for all aspects of finance, information technology and purchasing. Ms. Marchese will be leaving Tropicana following the closing of the sale of Tropicana to work full time with HSP.

95. Lisa Reilly has been retained by HSP to serve as consultant on casino comptroller matters and financial reporting. Ms. Reilly is currently employed by Tropicana Casino and Resort as Assistant Vice President of Finance and will be leaving upon the sale of Tropicana.

96. HSP has retained Casino Training Enterprises, ("CTE"), a minority owned business, as a consultant for personnel and training issues. Both owners of CTE have extensive experience in training casino employees. Ms. Fiore is a principal owner of Casino Gaming Institute ("CGI"), the largest privately owned casino training school serving Atlantic City casinos, having graduated over 10,000 students since 1997. Ms. Tweedle is the operating manager of CGI.

97. HSP submitted a traffic study along with its application and Edwards and Kelcey have reviewed the study. The traffic study identified the primary access points on Delaware Avenue at Frankford Avenue and Shackamaxon Street, with a secondary access located in Penn Street. Edwards and Kelcey indicated that the HSP traffic study encompassed nine (9) intersections with the afternoon peak hour being the critical peak hour analyzed in preparation of the study. The study also stated that 85% of the patrons entering and exiting the HSP site would do so via Interstate 95. In doing so, the study assumed that Penn Dot would complete the Girard Avenue Interchange allowing access to Interstate 95 a short distance north of the HSP site.

98. Edwards and Kelcey examined the three key mitigation areas identified in the HSP traffic study. First is that timing and coordination adjustments needed to be made on the traffic lights along Delaware and Girard Avenues, second is to widen the intersections at Delaware Avenue at Shackamaxon Street and Frankford Avenue in order

to install dual left turn lanes into the HSP site and third involves traffic calming measures to discourage traffic from accessing the HSP site from the local streets. In its traffic study HSP proposed achieving traffic calming through such things as speed bumps and neighborhood roadway narrowing.

99. After examining the HSP traffic study, Edwards and Kelcey determined that HSP needed to expand its study area. In response, HSP submitted an expanded traffic study to the Board. Edwards and Kelcey determined that the expanded traffic study was more comprehensive, but that additional information was still required. Edwards and Kelcey indicated that its primary concerns surrounded the scope of the intersections included in the study since not all signalized intersections between the casino site and interstate access were included in the study and the feasibility of HSP's recommended improvements.

100. As HSP's plans are further refined, Edwards and Kelcey recommended that HSP: review recent traffic accident statistics to determine the need for any safety measures; be prepared to make operational adjustments to adapt to changing conditions; resolve geometric design details; initiate early coordination with utility agencies and companies regarding relocation needs associated with street and intersection improvements; integrate public bus operations and stops with the roadway and site design; ensure vehicles entering the parking garage will not backup into public streets due to internal congestion; develop a comprehensive signage system in coordination with other nearby destinations; and ensure compliance with ADA requirements throughout the improvement areas.

101. HSP concurred with these recommendations and states it is committed to the mitigation and financing of all traffic issues related to the project.

102. The site is also accessible by public transportation stops near the site and HSP also is planning to run an employee shuttle bus to the site.

103. HSP has committed to funding a charitable organization known as the Sugar House Foundation. The Sugar House Foundation was established on April 17, 2006 and HSP has pledged to donate two and one half percent (2 ½ %) of its annual pre-tax income to the Sugar House Foundation, capped at \$3 million annually. The Foundation will, under the guidance of a board of directors, make grants for the benefit of the Philadelphia community and the immediate neighborhoods.

**PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT PARTNERS LP/
FOXWOODS ("PHILADELPHIA ENTERTAINMENT")**

104. Philadelphia Entertainment's facility will be located on a 16 and one half (16½) acre parcel of vacant land on the Delaware Riverfront at the site commonly known as Piers 60, 62 and 63 in Philadelphia.

105. Philadelphia Entertainment's submitted two site development plans to the Board: one if it is granted riparian rights on the Delaware River and one if it is denied riparian rights.

106. The design plan with riparian rights incorporates an existing pier of approximately 90,000 square feet and plans for restaurants, an entertainment venue, lounges and bars, retail shops, parking and full public access to the waterfront.

107. In the event that it is denied riparian rights, Philadelphia Entertainment has designed an entertainment complex that can be built without the use of riparian rights by moving the building back 80 to 100 feet from the other design, but still allowing for

the construction of a full entertainment district of more than 120,000 square feet in size on the water's edge.

108. Philadelphia Entertainment's project will be known as the Foxwoods Casino.

109. At the Public Input Hearing, thirty-five (35) individuals testified specific to Philadelphia Entertainment's proposed project. Two (2) state legislators testified with one (1) supporting the proposal and one (1) taking a neutral position. Three (3) representatives of local government testified with one (1) supporting the project and two (2) taking neutral positions. Fourteen (14) representatives of community groups testified with five (5) supporting the project, five (5) opposing the project and four (4) taking neutral positions. Finally, sixteen (16) individuals testified with four (4) supporting the project, five (5) opposing the project and four (4) taking neutral positions.

110. In addition, the PGCB received fifty-nine (59) written comments directed specifically to Philadelphia Entertainment's project by the June 2, 2006 deadline, with six (6) supporting the project and fifty-three (53) opposing the project.

111. Those speaking or providing written comments in support cited reasons such as increased job opportunities, added revenue, being good for the economy, tax relief, strengthening the marketing of Philadelphia and community partnerships, and that Foxwoods has a good track record, is good corporate neighbor and that it will have a good impact on businesses in south Philadelphia.

112. Those speaking or providing written comments in opposition cited reasons such as negative economic and social impacts on surrounding local communities,

negative impact on real estate values and local businesses, traffic congestion, adverse historical impacts, noise, light and street pollution and crime.

113. On November 14, 2006, the PGCB conducted a public suitability hearing for the purpose of taking additional testimony and evidence from Philadelphia Entertainment concerning its application and proposed project and its eligibility and suitability for licensure pursuant to the Act.

114. In addition to the public hearing, substantial time reviewing, analyzing and investigating the applications and various submissions was expended by the PGCB's Bureau of Licensing in processing and reviewing Philadelphia Entertainment's application, the Bureau of Investigations and Enforcement investigating Philadelphia Entertainment, its affiliates and key employee/qualifiers and the Bureau of Corporate Compliance and Internal Controls, along with the Financial Suitability Task Force, investigating the financial suitability of Philadelphia Entertainment.

115. The application for a Category 2 slot machine license filed by Philadelphia Entertainment is complete, all fees and costs which have been billed to Philadelphia Entertainment have been paid as required, all required bonds and/or letters of credit have been posted and Philadelphia Entertainment and its affiliated parties consented to and have undergone background investigations as required by the Act.

116. The PGCB did not utilize alternative licensing standards during the course of its investigation of Philadelphia Entertainment's application.

117. Philadelphia Entertainment was formed on January 6, 2005, for the exclusive purpose of acquiring ownership of the proposed site and obtaining a gaming license from the PGCB.

118. Philadelphia Entertainment is a Pennsylvania limited partnership, of which FDC/PEDP GP, LLC ("FDC/PEDP") is the general partner with a .01% ownership interest. Philadelphia Entertainment has two limited partners: Washington Philadelphia Investors, LP ("WPI") with a 70% ownership interest and FDC Philadelphia, LP ("FDC Philadelphia") with a 29.99% ownership interest.

119. WPI is comprised of a general partner, WPI GP, LLC ("WPI GP") and several limited partners, including Washington Philadelphia Community Charities, LP ("WPCC"), which holds a 60.52% ownership interest therein, and private individuals, who hold a combined ownership interest of 39.38% in WPI.

120. The Rubin Family Charitable Foundation and the Silver Family Charitable Foundation (together, the "Foundations"), hold limited partnership interests in WPCC. The trust documents of the Foundations provide that distributions after expenses will be pledged to charitable organizations in the greater Philadelphia area, particularly those supporting underprivileged children. The limited partnership agreement of WPCC provides that Edward M. Snider's 18.57% ownership interest in WPCC will also be pledged entirely to local charities. Therefore, through the trust documents and limited partnership agreements, 100% of WPCC profits and 42% of Philadelphia Entertainment's profits will be allocated to charities and other non-profit organizations in the greater Philadelphia area. This amount is estimated to be approximately \$300 million over ten years. No specific recipients have yet been identified.

121. Foxwoods Development Company ("Foxwoods Development"), a wholly-owned subsidiary of the Mashantucket Pequot Tribal Nation (the "Tribal Nation"), is the parent company of FDC/PEDP and FDC Philadelphia.

122. The Tribal Nation is a Native American Indian Tribe which gained federal recognition in 1983. Pursuant to the Indian Gaming Regulatory Act of 1988, federally recognized tribes are permitted to conduct full-scale casino gaming operations on tribal lands, subject to the negotiation of a compact with the affected state. The Tribal Nation is the sole owner of all tribal assets, including the Foxwoods Resort Casino, located in Mashantucket, Connecticut.

123. Foxwoods Development was formed in December 2003, by the Tribal Nation to serve as its commercial business arm and to pursue new development/management opportunities within the gaming and hospitality industries.

124. In 1992, the Tribal Nation opened Foxwoods Resort Casino on tribal lands in Connecticut. Foxwoods Resort Casino has grown to become the largest gaming resort in the world with 340,000 square feet devoted to gaming, approximately 7,400 slot machines and approximately 350 table games. Foxwoods Resort Casino has three (3) resort hotels with a combined total of approximately 1,400 rooms. The facility averages approximately 45,000 visitors per day. The current complex has theaters, lounges, nightclubs and approximately 55,000 square feet of meeting space.

125. Neither Philadelphia Entertainment, nor any of its affiliates, including the Tribal Nation, own any interest in any casino located in Atlantic City, New Jersey.

126. In December 2005, Philadelphia Entertainment entered into agreements with Foxwoods Development and its affiliated entities, (collectively, the "Foxwoods Entities") pursuant to which the Foxwoods Entities acquired an aggregate of 30% of the partnership interests of Philadelphia Entertainment and agreed to assist WPI in its efforts to obtain a Category 2 slot machine license for Philadelphia Entertainment.

127. The following entity qualifiers, affiliate qualifiers and key employee/qualifiers of Philadelphia Entertainment consented to and have undergone required background investigations: Washington Philadelphia Investors, LP; FDC Philadelphia, LP; FDC/PEDP GP, LLC; WPI GP, LLC; Washington Partners Community Charities, LP; Foxwoods Development Company, LLC; Foxwoods GP Philadelphia, LLC; WPCC GP, LLC; the Rubin Family Charitable Foundation; the Silver Family Charitable Foundation; the Mashantucket Pequot Tribal Nation; Foxwoods Management, LLC; Bally's Midwest Casino, Inc.; Peter D. DePaul; Frederick C. Tecce; Quincy D. Jones, Jr.; Anuj J. Agarwal; Alan A. Steinberg; Edward M. Snider; George F. Rubin; Aaron B. Krupnick; Michael J. Thomas; Kenneth M. Reels; Rodney A. Butler; Charlene R. Jones; Marjorie P. Colebut-Jackson; Richard E. Sebastian; Chalita A. Young; Pedro J. Johnson; Joseph A. Colebut, Sr.; John A. O'Brien; Maureen C. Sebastian; William J. Sherlock; Timothy A. Walker; James L. Dougherty and Gary D. Armentrout.

128. Neither Philadelphia Entertainment, nor any person or entity affiliated with Philadelphia Entertainment, is a party to any ongoing civil proceeding seeking to overturn a decision or order of the PGCB or the Thoroughbred or Harness Racing Commissions.

129. Philadelphia Entertainment does not possess any ownership or financial interest in any other slot machine licensee or person eligible to apply for a Category 1 license, its affiliate, intermediary, subsidiary or holding company. However, Bally's Midwest Gaming, Inc. ("Bally's") holds a promissory note in the amount of \$67.3 million from WPI, the 70% limited partner of Philadelphia Entertainment. Harrah's Entertainment, Inc. is the ultimate parent of both Bally's and Harrah's Chester Downs

Investment Company, LLC, which holds a 50% ownership interest in Chester Downs and Marina, LLC, a Category 1 slot machine licensee. Until the promissory note is repaid by WPI, a distribution by Philadelphia Entertainment to its partners will require WPI to pay Bally's 50% of the amount of the distribution, reducing dollar for dollar the 70% of that distribution that would otherwise be payable to WPI. However, all distributions by Philadelphia Entertainment to its partners must be made at such times and in such manner as FDC/PEDP, the general partner of Philadelphia Entertainment and wholly-owned subsidiary of Foxwoods Development Co., determines in accordance with the provisions of the partnership agreement and as permitted by applicable law. Bally's cannot obtain any ownership interest in Philadelphia Entertainment, even if WPI defaults on the promissory note, without PGCB approval pursuant to the Act. As presently constituted, the relationship does not violate the Act.

130. Neither Philadelphia Entertainment; nor any of its affiliates, intermediaries, subsidiaries or holding companies, possess any ownership or financial interest in any a supplier or manufacturer license.

131. No public official is a key employee/qualifier or has any prohibited financial interest in or is employed by Philadelphia Entertainment or any related entity.

132. Peter D. DePaul, a key employee/qualifier of Philadelphia Entertainment, disclosed in his application, and investigation confirmed, that he had made political contributions in violation of the Act. In order to resolve this matter, the PGCB entered into a consent agreement with Philadelphia Entertainment and Peter D. DePaul on December 4, 2006. In compliance with the terms of the consent agreement, Mr. DePaul

obtained the return of his political contributions and Philadelphia Entertainment and Mr. DePaul each paid the Commonwealth a fine.

133. Investigation did not reveal that Philadelphia Entertainment or any of its remaining affiliates or key employee/qualifiers made any political contributions of any kind in violation of the Act.

134. Philadelphia Entertainment satisfied all local, state and federal tax obligations.

135. Investigation did not reveal that Philadelphia Entertainment or any of its affiliates, directors, owners or key employee/qualifiers have been convicted of a felony or a gambling offense in violation of the Act.

136. Investigation did not reveal any information that would indicate that Philadelphia Entertainment or any of its affiliates, directors, owners or key employee/qualifiers is of unsuitable character.

137. Information gathered during the course of BIE's investigation concerning Philadelphia Entertainment and its affiliates, directors, owners and key employee/qualifiers did not reveal any information concerning bankruptcies, civil lawsuits or judgments, criminal convictions, past activities or business practices, business associates or dealing or any other information concerning the honesty, integrity, family, habits or reputation that would prohibit licensure of Philadelphia Entertainment or its key employee/qualifiers.

138. Philadelphia Entertainment is a new entity with no financial history. Therefore, the PGCB's Financial Suitability Task Force analyzed the past financial performance, financial risk profile and debt structure of the Tribal Nation to determine

the financial suitability of Philadelphia Entertainment. The Task Force also analyzed Philadelphia Entertainment's corporate structure, key individuals, project funding and project revenue potential.

139. The PGCB Financial Suitability Task Force did not find anything financially material that would preclude Philadelphia Entertainment from obtaining a Category 2 slot machine license.

140. The PGCB Financial Suitability Task Force projected a revenue estimate for Philadelphia Entertainment of approximately \$310.8 million annually in a stabilized year in 2005 dollars, with a win per position of \$284 per day at 3,000 machines.

141. Philadelphia Entertainment projected its revenue at an estimated \$338.0 million annually in a stabilized year in 2005 dollars, with a win per position of \$309 per day at 3,000 machines.

142. Philadelphia Entertainment's estimate is 8.7% greater than that of the PGCB Financial Suitability Task Force.

143. Philadelphia Entertainment has indicated and investigation has revealed that it has the ability to pay the \$50 million licensing fee and to post the \$1 million bond required when a Category 2 slot machine license is issued.

144. Based upon representations by Philadelphia Entertainment and investigation by the PGCB Financial Suitability Task Force, Philadelphia Entertainment is capable of maintaining a financially successful, viable and efficient business operation which will maintain a steady level of growth and revenue.

145. Based upon the commitment letter from Merrill Lynch, Philadelphia Entertainment has demonstrated that it has access to sufficient funds to develop the

proposed project. Merrill Lynch has committed to arrange and/or underwrite \$460 million in third-party financing for Philadelphia Entertainment's project, Foxwoods Casino Philadelphia. In addition, land valued at approximately \$70 million, which is part of the total project cost, has been contributed to the project by WPI and does not need to be financed by the partnership. Philadelphia Entertainment will also receive \$55 million from Foxwoods Development Co., \$30 million of which will come in the form of equity to the project with the remaining \$25 million to be repaid by Philadelphia Entertainment to the Tribal Nation.

146. Philadelphia Entertainment has adopted a good faith diversity plan. The diversity plan states that Philadelphia Entertainment is committed to providing equal opportunity in employment for all people and to prohibiting discrimination in employment on the basis of race, color, religion, sex, national origin, age, sexual orientation, marital status, AIDS or HIV status, non job-related disability or veteran's status.

147. Philadelphia Entertainment has a history of promoting diversity. The Tribal Nation has historically allocated 12% of its company's total spending to minority-owned suppliers.

148. Diverse groups are represented in the ownership of Philadelphia Entertainment. Through its subsidiaries, the Tribal Nation holds an aggregate of 30% of the partnership interests of Philadelphia Entertainment. In addition, Quincy D. Jones, Jr., an African American, holds a 5.62% limited partnership interest in WPI, a 70% limited partner of Philadelphia Entertainment. Billy King and Dawn Staley, both African

Americans, each hold a 1.12% limited partnership interest in WPCC, the 60.52% limited partner WPI.

149. Overall, approximately 51% of Philadelphia Entertainment is minority and/or women owned and operated.

150. Philadelphia Entertainment submitted a Compulsive and Problem Gaming Plan with its application, but the plan requires amendment as it does not fully address all criteria for development, employee training items, self-exclusion training and underage gambling. However, the plan does express Philadelphia Entertainment's intent to comply with the Act's signage requirements. The status of this plan does not exclude a finding of eligibility and suitability at this time.

151. Philadelphia Entertainment's proposed site along the Delaware riverfront is bordered by Columbus Boulevard to the west, Reed Street to the north, and Tasker Avenue to the south and is south of the Benjamin Franklin Bridge and north of the Walt Whitman Bridge.

152. The site is almost equal in distance between the Sports Complex in South Philadelphia and Center City. A movie theater complex and big box retailers such as Wal-Mart and Home Depot are immediately adjacent to the site.

153. Philadelphia Entertainment's proposed site is farther in distance from the proposed HSP/Sugarhouse project, the recipient of a Philadelphia Category 2 slot machine license, than the other two (2) proposed projects by PNK and Riverwalk along the Delaware riverfront.

154. Philadelphia Entertainment has a three phase construction plan. Philadelphia Entertainment plans to begin construction of Phase I in February 2007, with

an opening date scheduled for November 2008. Plans for Phase I include 3,000 slot machines, a 2,000-seat showroom, an entertainment lounge, retail shops, a 600-seat buffet, a 250-seat five-outlet food court and 250-seat sport bar, as well as a 4,200-space parking garage with an additional 300 surface parking spaces. Philadelphia Entertainment estimates that the total costs and expenses for Phase I will amount to approximately \$525.8 million and it is committed financially to the building of this phase.

155. Philadelphia Entertainment's Phase II plan calls for an expansion of the casino floor by approximately 66,000 square feet to accommodate the addition of 2,000 slot machines and/or table games. Phase II plans also include the addition of nightclubs, restaurants, boutique retail shopping and an expansion of the parking garage for an additional 1,200 parking spaces. The total costs for Phase II are estimated to total approximately \$223 million. Philadelphia Entertainment does not have a commitment for the financing of Phase II and its construction will be dependent upon market conditions.

156. Philadelphia Entertainment's Phase III plan includes the construction of two (2) 30-story towers that are connected to the existing casino and entertainment complex. The west tower will be a hotel with approximately 500 rooms and the east tower is designed to be either an additional 500-room hotel or a 200-resident condominium. In addition to the two (2) towers, Phase III plans include additional restaurants, a spa and an outdoor pool. Philadelphia Entertainment anticipates the total project cost for Phase III at approximately \$208.5 million. Philadelphia Entertainment does not have the commitment for the financing of Phase III and its construction will be dependent upon market conditions.

157. Philadelphia Entertainment's project is designed to be fully compliant with the requirements of Philadelphia's Commercial Entertainment District and has all of the required setbacks, height restrictions, landscape requirements and public access required. The plan would also provide public access to the riverfront.

158. Philadelphia Entertainment does not plan to build a temporary casino.

159. Philadelphia Entertainment estimates that the Phase I facility will create 950 permanent operations positions. These positions are intended to be living wage positions with full medical benefits. More permanent employment positions will be created as Foxwoods Casino Philadelphia is expanded.

160. Philadelphia Entertainment estimates that between 945 and 1,071 construction jobs will be created during the Phase I construction of Foxwoods Casino Philadelphia. Philadelphia Entertainment is committed to utilizing union labor in the construction of the project.

161. Philadelphia Entertainment has committed to hire and train local applicants to fill 95% of the new employment positions at Foxwoods Casino Philadelphia.

162. Philadelphia Entertainment has committed to work with and utilize the Philadelphia Opportunities Industrial Center and Community Self Empowerment Program, along with other similar organizations, for job training.

163. Philadelphia Entertainment has no business history, however, the record indicates that the Tribal Nation has a favorable record of compliance with applicable federal, state and local discrimination, wage and hour, disability and occupational,

environmental health and safety, and labor relations and employment laws and a favorable record in dealing with employees and their representatives.

164. Philadelphia Entertainment has entered into a management agreement with Foxwoods Management, LLC ("Foxwoods Management"), a wholly-owned subsidiary of Foxwoods Development, whereby Foxwoods Management will provide the professional services necessary and appropriate to acquire the site and to develop, construct, operate and manage Foxwoods Casino Philadelphia. Under the terms of the management agreement Philadelphia Entertainment will pay, on an annual basis, all costs and expenses paid or incurred by Foxwoods Management. No management fee will be paid by Philadelphia Entertainment to Foxwoods Management prior to the tenth anniversary of the opening date. This agreement must be approved by the PGCB.

165. Philadelphia Entertainment's traffic expert has proposed a plan to allow traffic to flow better on South Columbus Boulevard. Working in conjunction with the City of Philadelphia and the Pennsylvania Department of Transportation, and using standards set forth in the Institute of Transportation Engineers publications, Philadelphia Entertainment's traffic experts submitted a series of mitigation measures that it believes will reduce traffic congestion on Columbus Boulevard by 32%. To improve traffic flow Philadelphia Entertainment has proposed widening a street as it approaches Columbus Boulevard, constructing double left turn lanes at two intersections, re-striping other intersections, and adding two new traffic signals along Columbus Boulevard. These Phase I improvements would be completed prior to the opening of the gaming facility in November 2008.

166. Philadelphia Entertainment has committed to fund 100% of the traffic improvements proposed as part of its Phase I development. Philadelphia Entertainment has committed to fund "its fair share" of the proposed traffic mitigation measures for Phase II, which includes the construction of a new southbound off-ramp from Interstate 95 to Dickenson Street and reversal of travel along that street between Front Street and Columbus Boulevard.

167. Edwards & Kelcey reviewed Philadelphia Entertainment's traffic study and proposed mitigation measures and also recommended that measures be taken by Philadelphia Entertainment to mitigate the project impacts. Following that review, Philadelphia Entertainment's proposed mitigation plan and measures adequately addressing traffic issues in the area of the proposed casino.

168. Philadelphia Entertainment has committed to help set up and fund a special services district to mitigate impacts to the communities nearest to and most directly impacted by the project. There has been no specific commitment as to which communities would be included in the special services district, the amount of money that would be contributed to the special services district, or exactly how the monies would be used.

169. In addition, approximately forty-two percent (42%) of Philadelphia Entertainment's profits will pass through charitable trust owners to charitable causes to primarily assist education and disadvantaged children at a rate of approximately \$300 million over ten (10) years.

KEYSTONE REDEVELOPMENT PARTNERS, LLC/TRUMPSTREET

170. Initially, Keystone proposed building a 90,000 square foot casino with 3,000 gaming positions on an 18 acre tract of land referred to as the Budd Site, which is located near the intersection of Henry and Roberts Avenues in Philadelphia.

171. After acquiring the option on an additional piece of property, Keystone informed the PGCB of its intent to build a temporary casino, which would ultimately be incorporated into the permanent, larger facility.

172. The proposed site with the additional land was approximately thirty (30) acres of mostly vacant land in an industrial area that was not located along the Delaware River. The proposed site consisted of the previously optioned Budd site and the still occupied Tasty Baking Company site all located near the intersection of Fox Street and Roberts Avenue, and the Interstate 76 (the Schuylkill Expressway) and Route 1 (City Line Avenue) interchange.

173. In addition to a temporary casino, the new master plan included food and beverage outlets, a three (3) screen cinema, a coffee bar, bars and lounges, retail space, an entertainment venue and a hotel.

174. The design concept celebrated the legacy of the Budd Company site, which manufactured Zephyr trains, in a modern and creative manner by using steel and glass to re-interpret the forms of the trains created on the site. A 200 foot high smoke stack on the sight was inspired by the Zephyr Train and would have marked the site. The project proposed was to be known as the TrumpStreet Casino and Entertainment Complex ("TrumpStreet").

175. At the Public Input hearing fifty-nine individuals testified specifically about the Keystone project. Four (4) state legislators testified with three (3) supporting the project and one (1) taking a neutral position. Three (3) representatives of local government units testified with one (1) supporting the project and two (2) taking neutral positions. Twenty-one (21) representatives of community groups testified with eight (8) supporting the project, eight (8) opposing the project and five (5) taking neutral positions, but expressing additional questions or concerns. Thirty-one (31) individuals testified with fifteen (15) supporting the project and thirteen (13) opposing the project. The remaining three (3) speakers requested more time to analyze certain aspects of the project.

176. Written comments were also received by the PGCB by the June 2, 2005 deadline. Fifty-nine (59) comments were received with fifteen (15) supporting the project and forty-four (44) opposing the project.

177. Those speaking or providing written comments in support cited reasons such as increased employment opportunities that the project would bring to the area, the availability of funding by Keystone for local community groups and the idea that the project would serve to ignite further development in the nearby area.

178. Those speaking or providing written comments in opposition cited reasons such as increased traffic in the area, the impact on the students at a nearby school as well as a local playground and basketball court, increased crime, substance abuse and compulsive gambling and the impact upon the residents of the nearby Abbotsford Home.

179. On November 14, 2006, the PGCB conducted a public suitability hearing for the purpose of taking additional testimony and evidence from Keystone concerning its

application and proposed project and its eligibility and suitability for licensure pursuant to the Act.

180. In addition to the public hearings, substantial time reviewing, analyzing and investigating the applications and various submissions was expended by the PGCB's Bureau of Licensing in processing and reviewing Keystone's application, the Bureau of Investigations and Enforcement investigating Keystone and its affiliates and key employee/qualifiers and the Bureau of Corporate Compliance and Internal Controls, along with the Financial Suitability Task Force investigating the financial suitability of Keystone.

181. The application for a Category 2 license filed by Keystone is complete, all fees and costs which have been billed to Keystone have been paid as required, all required bonds and/or letters of credit were posted and Keystone and its affiliates and key employee/qualifiers consented to and have undergone background investigations as required by the Act.

182. Keystone's ownership consisted of a variety of parties/entities, however, they can be divided into two broad categories: Trump related (63.73%) and general members (36.27%).

183. TER Keystone Development Co. LLC was the Trump related entity, owning 63.73% and the general members were, Quaker City Gaming, LLC owning 9.6877%, Yo! Gaming, LLC owning 7.6482%, Neighborhood Partnership, LLC owning 7.0108%, S&B Investment Group LLC owning 7.0108%, Mitchell Morgan owning 3.5054% and MSM Gaming, Inc. owning 1.4022%.

184. Diversity of ownership is obtained through ownership interests in the publicly owned companies of TER and/or Trump related entities which own approximately 63% of Keystone, and through the individual interests.

185. Although several of Keystone's Trump affiliates possess gaming licenses in other jurisdictions, the PGCB did not utilize alternative licensing standards during the course of its investigation of Keystone's application.

186. The following entity qualifiers, affiliate qualifiers and key employee/qualifiers of Keystone consented to and have undergone required background investigations: Hunting Fox Associates I, LP, Hunting Fox I, Inc., MSM Gaming, Inc., Neighborhood Partnership LLC, Preferred Real Estate Developers II, Inc., Preferred Real Estate Developers II, LP, Quaker City Gaming, LLC, TCI 2 Holdings, LLC, TER Development Company, LLC, TER Keystone Development Company, LLC, TER Management Company, LLC, The Deed of Trust of Michael G. O'Neill dated November 15, 1992, Trump Casinos, Inc., Trump Entertainment Resorts, Inc., Trump Entertainment Resorts Holdings, LP, Werther Partners, LP, Yo! Gaming, LLC, Trump Entertainment Resorts Development Keystone Development LLC, Trump Entertainment Resorts Development, LLC, S&B Investments Group, LLC, Trump Entertainment Resorts Funding, Inc., Trump Entertainment Resorts Development Company, LLC, Trump Marina Associates, LLC, Trump Plaza Associates, LLC, Trump Taj Mahal Associates, LLC, Donald J. Trump, James Perry, Wallace Askins, Dale Black, John Burke, Edward D'Alelio, James Florio, Cezar Froelich, Morton Handel, Erik Hausler, Mark Juliano, Paul Keller, Michael Kramer, Virginia McDowell, Robert Pickus, Richard Santoro, Brian Savacool, Don Thomas, Jeanne Wilkins, Richard Weber, Douglas Burkhalter, Larry

Doyle, Michael O'Neill, Jeannie O'Neill, Erik Kolar, Nimish Sanghrajka, Michael Balitsaris, Kevin Traynor, Alan Werther, Meredith Werther, Edward Miersh, Mitchell Morgan, Shawn Stockman, Nathan Morris, Wanya Morris, Brian Tierney, Dominick Cipollini, Peter Ciarocchi, Steven Berk, Gerald Segal and Pasquale Croce.

187. The following individuals requested a waiver of their obligation to be licensed claiming they are an outside director of an affiliate, intermediary, subsidiary or holding company of Keystone, are not members of the audit committee and are not significantly involved in the management or ownership of Keystone: James Florio, Cezar Froelich, Morton Handel, Brian Savaool and Don Thomas

188. The following also requested waivers of their obligation to be licensed claiming they meet the definition of institutional investor, have under 15% of the equity securities of Keystone or its holding or intermediary companies, the securities are those of a publicly traded corporation and its holding of the securities were purchased for investment purposes only: Morgan Stanley and Co., Inc. and Franklin Mutual Advisors, Inc.

189. Neither Keystone, nor any person or entity affiliate with Keystone, is a party to any ongoing civil proceeding seeking to overturn a decision or order of the PGCB or the Thoroughbred or Harness Racing Commissions.

190. Keystone does not possess any ownership or financial interest in any other slot machine licensee or person eligible for a Category 1 license, its affiliate, intermediary, subsidiary or holding company.

191. Neither Keystone, nor any of its affiliates, intermediaries, subsidiaries or holding companies, possess any ownership or financial interest in any supplier or manufacturer license.

192. No public official is a key employee/qualifier or has any prohibited financial interest in or is employed by Keystone or any related entity.

193. Neither Keystone, nor any of its affiliates or key employee/qualifiers, made any political contributions of any kind in violation of the Act.

194. Keystone satisfied all local, state and federal tax obligations.

195. Investigation did not reveal that Keystone or any of its affiliate, directors, owners or key employee/qualifiers have been convicted of a felony or gambling offense in violation of the Act.

196. Investigation did not reveal any information that would indicate that Keystone or any of its affiliates, directors, owners or key employee/qualifiers is of unsuitable character.

197. Information gathered during the course of BIE's investigation concerning Keystone and its affiliates, directors, owners and key employee/qualifiers did not reveal any information concerning bankruptcies⁶, civil lawsuits or judgments, criminal convictions, past activities or business practices, business associates or dealings or any other information concerning the honesty, integrity, family, habits or reputation that would prohibit licensure of Keystone or its key employee/qualifiers.

198. Keystone is a newly formed entity with no financial history. Therefore, the PGCB's Financial Suitability Task Force analyzed TER Keystone Development Co., the

⁶ Evidence was provided concerning bankruptcies to permit the reorganization of Trump Entertainment properties in Atlantic City. Those matters do not disqualify the applicant from consideration.

63.73% owner of Keystone; and its parent company, Trump Entertainment Resorts, Inc. for historical financial performance, financial risk profile, debt structure, corporate structure and project revenue potential to determine the financial suitability of Keystone.

199. The PGCB Financial Suitability Task Force did not find anything financially material that would preclude Keystone from obtaining a Category 2 slot machine license.

200. The PGCB Financial Suitability Task Force projected a revenue estimate of approximately \$310.8 million annually in a stabilized year in 2005 dollars, with a \$284 win per position per day at 3,000 machines.

201. Keystone projected its revenue estimates at \$399.4 million annually in a stabilized year in 2005 dollars, with a \$365 win per position per day at 3,000 machines.

202. Keystone's projections were 28.5% greater than the estimate of the PGCB Financial Suitability Task Force.

203. Keystone indicated and investigation revealed that it had the ability to pay the \$50 million licensing fee and to post the \$1 million bond required if a Category 2 slot machine license had been granted to Keystone.

204. Based upon representations by Keystone and investigation by the PGCB's Financial Suitability Task Force, Keystone was likely to maintain a financially successful, viable and efficient business operation which would have maintained a steady level of growth and revenue.

205. Keystone had a good faith Diversity Plan in place which generally stated that Keystone had a strong commitment to embrace diversity in all areas of its organization and every phase of its operation and that it does not tolerate any form of

discrimination or harassment in the workplace, with business associates or in daily business activities.

206. Keystone implemented policies, procedures and practices which prohibited discrimination on the basis of race, religion, color, national origin, ancestry, sexual orientation, gender, age, marital status, AIDS or HIV status, liability for service in the armed forces of the United States, non job-related disability and veterans' status.

207. Keystone's plan proposed use of minority and women owned businesses, as well as businesses owned by persons with disabilities, which it would seek out through advertising, community and government contacts and through the contacts and business associates of its related entities.

208. Keystone submitted a Compulsive and Problem Gambling Plan with its application, but the plan required amendment as it did not fully address all criteria for development, employee training items, self-exclusion training and underage gambling. However, the plan did express Keystone's intent to comply with the Act's signage requirements. The status of this plan does not exclude a finding of eligibility and suitability at this time.

209. Keystone's proposed site was the only proposed site not located along the Delaware River. Instead, the proposed site was located in area comprised of mixed industrial and residential neighborhoods that currently have few, if any, attractions, retail shops or restaurants.

210. This area of the city is presently an economically depressed area with 38% of the families living below the poverty line, 27% of the population earning less than \$10,000 per year and only 55% of the population being employed full-time.

211. Keystone proposed to build a \$444.8 million project, beginning construction of the temporary/Phase I facility no later than May 2007, with a projected opening in or about May, 2008.

212. The temporary/Phase I facility would have consisted of a gaming floor with 1,500 slot machines, limited food and beverage outlets and a three (3) screen cinema. The temporary facility was to be serviced by surface parking. Keystone was committed financially to building and operating this phase of the project.

213. Construction of a permanent/Phase II facility would have commenced no later than September 2007, with an opening on or about May, 2009.

214. The permanent facility would have had a gaming floor containing 3,000 slot machines, a coffee bar, additional bars and lounges, upscale restaurants, retail shops and a buffet and it would have been serviced by a 3,000 space parking garage. Keystone was committed financially to building and operating this phase of the project.

215. Keystone's Master Plan included further expansion, including an additional 2,000 slot machines, an entertainment venue, a 400 room hotel and additional parking. However, no firm commitments, financially or otherwise, were made with respect to this phase of the project.

216. The project proposed included \$2.5 million to raze dilapidated and vacant homes in the area, as well as money to restore the facades on other deteriorating homes in the area.

217. Keystone had a management agreement with TER Management Co., LLC, a subsidiary of Trump Entertainment Resorts Holdings, LP. The management company

was to provide Keystone with operational and gaming management services for an initial term of ten years.

218. Keystone estimated that its temporary/Phase I facility would create approximately 500 full-time equivalent positions.

219. Keystone estimated that its permanent facility would create approximately 1,000 full-time equivalent positions with an average annual compensation of \$31,000 each.

220. Keystone estimated that the project would create between 1,379 and 2,067 construction jobs.

221. Keystone expected to fill approximately 75% of its jobs with individuals residing in the immediate community/area and 90% of the jobs with Philadelphia residents.

222. While Keystone was a newly formed company with no history, its affiliates such as Trump Entertainment Resorts have a favorable record of compliance with applicable federal, state and local discrimination, wage and hour, disability and occupational, environmental health and safety, and labor relations and employment laws, and a favorable record in dealing with employees and their representatives. Keystone had neutrality agreements with operations engineers, Teamsters and UNITE HERE.

223. Keystone's parent company, Trump Entertainment Resorts, owns several casino properties in Atlantic City, New Jersey.

224. A part of Keystone's marketing plan was a direct marketing campaign aimed at the more than 1 million previous and known customers of the Trump Atlantic

City properties - Trump Marina, Trump Taj Mahal and Trump Plaza - who resided within 25 miles of the Keystone site.

225. While Keystone was a newly formed entity, its parent company and affiliates have considerable experience and presence in the gaming industry. In addition to the "Trump" brand, Keystone would have relied on gaming professionals such as Mark Juliano who has over twenty (20) years of gaming experience, James Perry who has over thirty (30) years of gaming experience and Robert Pickus who has over twenty-three (23) years of gaming experience.

226. Keystone submitted a traffic study prepared by Vollmer Associates with its application. The study concluded that with proper mitigation efforts all increased traffic flow as a result of Keystone's project could be adequately handled.

227. The study was reviewed by Edwards and Kelcey who concluded that the study was deficient in that it did not analyze future conditions more than ten years beyond the opening date of the casino.

228. Keystone then submitted a revised traffic study which, among other things, addressed most of the issues raised by Edwards and Kelcey's initial review.

229. This revised plan was reviewed by Edwards and Kelcey who concluded that most of the traffic issues that can be addressed at this stage of planning have, in fact, been addressed systematically and thoroughly.

230. The Keystone site was also accessible by public transportation.

231. It has been the longstanding practice of Keystone's Trump affiliates in Atlantic City to donate excess food to the Atlantic City Rescue Mission and the Atlantic City Food Bank. In addition, the Trump organizations in Atlantic City are heavily

involved with the United Way of Atlantic County, soliciting contributions of time and money from all levels of the organizations, and from the organizations themselves. In 2002, financial contributions reached their peak, totaling approximately \$710,000. Also, prior to the issuance of a riverboat license to Trump Indiana, Inc., another Trump affiliate of Keystone, a development agreement was negotiated and executed with the host community, Gary, Indiana. Under the Indiana development agreement, Trump Indiana, Inc. contributed approximately \$1 million in scholarships and endowments to local organizations.

232. Keystone had entered into agreements with Tioga United and the Allegheny West Foundation non-profits, whereby if Keystone was awarded a license it would contribute \$2.5 million for charitable purposes within six months and would thereafter provide a percentage of its daily gross terminal revenue at a rate no less than: (i) \$1 million annually for each of the first five fiscal years of its operation of the project; and (ii) for each year thereafter, an amount equal to \$1 million increased on an annual compounded basis by the United States Bureau of Labor Statistics Consumer Price Index.

233. Keystone agreed to make contributions of \$1.5 million to fund local school renovations and upgrades, as well as to fund scholarships to schools in the immediate neighborhood.

234. Keystone also agreed to donate surplus food and goods to charitable and community based organizations.

PINNACLE ENTERTAINMENT, INC. and PNK (PA), LLC ("PNK")

235. PNK's proposal was located on thirty-three (33) acres along the Delaware River near the Fishtown section of the City on the site of a former shipbuilding yard.

236. The proposal included a temporary casino to house 1,500 slot machines located in a former warehouse on the proposed site. The permanent project included a casino to house over 3,000 slot machines, restaurants, retail space and movie theaters all around a central pond area that would become a skating rink during the winter months.

237. PNK intended to develop a project that would be a part of the historic heritage of the Delaware waterfront in Philadelphia and would provide public access to the riverfront.

238. At the Public Input Hearing twenty-five (25) individuals testified specifically with regard to the PNK project. Two (2) Legislators testified with one supporting the project and the other neither supporting nor opposing it. Three (3) representatives of local government units testified with one (1) supporting the project while the other two (2) were neutral. Eleven (11) representatives of Community Groups testified with five (5) of the groups supporting the project and six (6) neither for nor against the project. Nine (9) individuals testified with five (5) supporting the project and one (1) opposing the project. The remaining three requested more time to analyze certain aspects of the project.

239. In addition, the PGCB received five (5) written comments directed at the PNK project by the June 2, 2005 deadline with one (1) supporting the project and four (4) opposing the project.

240. Those speaking or providing written comments in support cited reasons such as increased job opportunities, added revenue, being good for the economy, tax relief, strengthening the marketing of Philadelphia and community partnerships, increasing tourism and the development of underused or unused properties.

241. Those speaking or providing written comments in opposition cited reasons such as gambling addiction, traffic congestion, adverse historical impacts, noise and street pollution, destruction of riverfront property, crime, public safety and not enough EMT's and police.

242. On November 15, 2006, the PGCB conducted a public suitability hearing for the purpose of hearing additional testimony and evidence from PNK concerning its application and proposed project and its eligibility and suitability for licensure pursuant to the Act.

243. In addition to the public hearing, substantial time reviewing, analyzing and investigating the applications and various submissions was expended by the PGCB's Bureau of Licensing in processing and reviewing PNK's application, the Bureau of Investigations and Enforcement investigating PNK, its affiliates and key employee/qualifiers and the Bureau of Corporate Compliance and Internal Controls, along with the Financial Suitability Task Force investigating the financial suitability of PNK and its parent company Pinnacle.

244. The application for a Category 2 slot machine license filed by PNK is complete, all fees and costs which have been billed to PNK have been paid as required, all required bonds and/or letters of credit were posted and PNK and its affiliated parties consented to and have undergone background investigations as required by the Act.

245. PNK was formed on December 23, 2005, as a Pennsylvania Limited Liability Company, and had no previous business history in Pennsylvania or any jurisdiction.

246. PNK was organized to build, own and operate limited gaming establishments in Pennsylvania. Pinnacle, its parent company, is publicly traded on the New York Stock Exchange and is the 100% owner of PNK.

247. PNK's diversity of ownership is limited because of Pinnacle's 100% ownership of PNK. Diversity of ownership is obtained through ownership of the publicly traded parent corporation, Pinnacle.

248. Pinnacle, headquartered in Las Vegas, Nevada, is a diversified, multi-jurisdictional owner and operator of gaming entertainment facilities. Pinnacle is the successor to the Hollywood Park Turf Club, organized in 1938. In 1981, Pinnacle was incorporated in the State of Delaware under the name of Hollywood Park Realty Enterprises, Inc. The name was changed to Pinnacle Entertainment in February 2000.

249. Pinnacle owns and operates numerous gaming properties in the United States: Belterra Casino Resort, Indiana; Boomtown Casino and Hotel, Bossier City Louisiana; Boomtown New Orleans, a dockside riverboat; Boomtown Casino and RV Park, Nevada; and L'Auberge du Lac, Lake Charles, Louisiana. Casino Magic Biloxi was located in Biloxi, Mississippi but was destroyed by Hurricane Katrina. In addition to the United States properties, Casino Magic Argentina operates five land based casinos in the Patagonia region of Argentina and the Casino at Emerald Bay, Great Exuma Bahamas, opened in May 22, 2006 in space subleased in the Four Seasons Resort Great Exuma at Emerald Bay.

250. In addition to its current operations, Pinnacle has several development projects pending. In 2004, the company was given priority status to design, develop and operate two major casino projects in the St. Louis, Missouri area and in November 2005,

Pinnacle broke ground on the \$375,000,000 River City Casino & Hotel in the South St. Louis community of Lemay. In August 2005, the company submitted a bid for a development in Rancagua, located within a 45 minute drive of Santiago. In January 2006, Pinnacle announced plans to add 250 guestrooms to the Belterra Casino Resort for approximately \$45,000,000 and the first guestrooms at Boomtown New Orleans property for approximately \$30,000,000. In May 2006, Pinnacle signed a definitive agreement under which it will acquire certain Lake Charles, Louisiana assets of Harrah's and Pinnacle intends to build a second casino resort in Lake Charles (Sugarcane Bay). In September 2006, Pinnacle signed an agreement to purchase The Sands Hotel and Casino and adjacent real estate parcels, including the Traymore site in Atlantic City, New Jersey and plans to develop this property in the future.

251. Although PNK's parent company, Pinnacle, has been issued casino licenses by other state and foreign agencies and these licenses are in good standing, the PGCB did not utilize alternative licensing standards during the course of its investigation of PNK's application.

252. The following entity qualifiers, affiliate qualifiers and key employee/qualifiers of PNK consented to and have undergone required background investigations: Pinnacle, Daniel Lee, Wade Hundley, Alain Uboldi, Stephen Capp, John Godfrey, Christopher Plant, Clifford Kortman, Sarah Tucker, John Giovenco, Michael Ornest and Bruce Leslie.

253. The following individuals requested waivers of their obligation to be licensed claiming they are outside directors of an affiliate, intermediary, subsidiary or holding company of PNK, are not members of the audit committee and are not

significantly involved in the management or ownership of PNK: James Barich, Arthur Goldberg, Kimberly Townsend, Humberto Trueba, Rickey Dodd, John Durham, Alice Mui, Linda Shaffer, Paul Contesse, Larry Buck, Jack Fischer, Todd George, Joseph Lepinski, Terry Schneider, David Williams, Richard Goeglein, James Martineau and Lynn Reitnour.

254. Neither PNK, nor any person or entity affiliated with PNK, is a party to any ongoing civil proceeding seeking to overturn a decision or order of the Board or the Thoroughbred or Harness Racing Commissions.

255. Neither PNK, nor any of its affiliates or holding companies, possesses any ownership or financial interest in any other slot machine licensee or person eligible to apply for a Category 1 license, its affiliate, intermediary, subsidiary or holding company.

256. Neither PNK, nor any of its affiliates, subsidiaries, intermediaries or holding companies, hold any interest in a supplier or manufacturer license.

257. No public official is a key employee/qualifier or has any prohibited financial interest in or is employed by PNK or any related entity.

258. Neither PNK, nor any of its affiliates or key employee/qualifiers, have made any political contributions of any kind in violation of the Act.

259. PNK satisfied all local, state and federal tax obligations.

260. Investigation did not reveal that PNK or any of its affiliates, directors, owners or key employee/qualifiers has been convicted of a felony or a gambling offense in violation of the Act.

261. Investigation did not revealed any information that would indicate that PNK or any of its affiliates, directors, owners or key employee qualifiers is of unsuitable character.

262. Information gathered during the course of investigation concerning PNK, is parent company Pinnacle and its key employee/qualifiers did not reveal any information concerning bankruptcies, civil lawsuits or judgments, criminal convictions, past activities or business practices, business associates or dealing or any other information concerning the honesty, integrity, family, habits or reputation that would prohibit licensure of PNK, Pinnacle or its key employee/qualifiers.

263. PNK has no financial history. Therefore, the Financial Suitability Task Force analyzed PNK's parent company, Pinnacle's, historical financial performance. The Financial Suitability Task Force and did not find anything financially material that would preclude PNK from obtaining a Category 2 slot machine license.

264. Pinnacle has a diverse base of gaming and entertainment operations throughout the United States with approximately 85% of its revenues from gaming activities. Profitability for Pinnacle has fluctuated and its revenue and adjusted EBITDA growth have varied each year since the fiscal year ended December 31, 2000. Financial analysis indicates a history of operating with a high-risk financial profile, an interest coverage ratio that varied during the period studied, a leverage ratio that suggests a higher risk financial profile and a liquidity ratio greater than 1.0x. Pinnacle has demonstrated that the capital markets are reasonably comfortable with its financial profile.

265. PNK would have relied on funding from its parent company, Pinnacle, for project financing. To fund the project, Pinnacle would have drawn on its existing \$750 million bank credit facility.

266. The PGCB Financial Suitability Task Force projected a revenue estimate of approximately \$310.8 million annually in a stabilized year in 2005 dollars, with a \$284 win per position per day at 3,000 machines.

267. Pinnacle projected its revenue estimates at \$338.7 million annually in a stabilized year in 2005 dollars, with a \$309 win per position per day at 3,000 machines.

268. PNK's projections were 9% greater than the estimate of the PGCB Financial Suitability Task Force.

269. PNK indicated and investigation revealed that it had the ability to pay the \$50 million licensing fee and to post the \$1 million bond required if a Category 2 slot machine license had been granted to PNK.

270. Based upon representations by PNK and investigation by the PGCB's Financial Suitability Task Force, PNK was likely to maintain a financially successful, viable and efficient business operation which would have maintained a steady level of growth and revenue.

271. PNK had a good faith diversity plan in place. PNK stated that it was committed to providing equal opportunity in employment for all people and to prohibiting discrimination in employment on the basis of race, color, religion, sex, national origin, age, sexual orientation, marital status, AID or HIV status, non job-related disability or veteran's status.

272. PNK expressed that its parent company, Pinnacle, had a history of promoting diversity and that PNK would do the same in Philadelphia. PNK had begun to meet with local leaders in Philadelphia in order to implement a diversity plan and PNK had retained the services of Cardenas Grant Communications, a public relations and communications firm that specializes in multicultural outreach.

273. PNK submitted a Compulsive and Problem Gaming Plan with its application, but the plan required amendment as it did not fully address all criteria for development, employee training items, self-exclusion training and underage gambling. However, the plan did express PNK's intent to comply with the Act's signage requirements. The status of this plan does not exclude a finding of eligibility and suitability at this time.

274. PNK's planned casino project was to be located along the Delaware River near the intersection of Dyott Street, Delaware Avenue and Richmond Street in the city of Philadelphia, near the residential Fishtown neighborhood.

275. PNK indicated that it intended to open a temporary casino with approximately 2,000 slot machines, within nine (9) to twelve (12) months from licensure, in a former 55,000 square foot fruit and cheese warehouse on the site. The temporary site also contemplated two (2) to three (3) dining outlets and several bars. PNK was financially committed to completion of the temporary casino.

276. Phase I of the permanent facility then contemplated a 80,488 square foot gaming floor and 3,000 slot machines. That phase would have begun with construction of a parking garage and included a pond/ice skating rink with a performance stage, several restaurants including a high end buffet/food court, various lounges and bars, retail

space, a multiplex movie theater and a casino. Construction of Phase I was expected to continue with little impact on the operation of the temporary facility and be completed between January and June of 2009. PNK was financially committed to completion of Phase I of the project estimated at \$300 to \$400 million.

277. Pinnacle intended to develop a project that would be part of the historic heritage of the Delaware waterfront in Philadelphia. Entertainment would have consisted of restaurants, night clubs, live performances, shopping, an ice skating rink and a casino.

278. Expansions of the initial project would have been dependent upon favorable marketing conditions. Phase II plans included increasing the casino to include an additional 2,000 slot machines and additional parking. Phase III would have included, if the market demanded, the development of condominium units, timeshares or a hotel component. PNK was not financially committed to Phases II and III of the project and these phases would have been developed only if the market and economy had allowed.

279. PNK indicated that Pinnacle would have managed and overseen the operations of PNK and would have been entitled to receive a management fee of 2% of the adjusted gross revenues plus 5% of PNK EBITDA. Pinnacle enters into standard management agreements with the project level subsidiaries in every state and it intended to do so in Pennsylvania with PNK.

280. PNK anticipated that Phase I the project would have created 1,300 permanent operating positions expected to be quality, full-time living wage positions, and that Phases II and III could have created an added 1,900 operating positions.

281. PNK anticipated the project would have created 1,200 construction jobs through Phase I and that Phases II and III would have created an additional 2,100 construction jobs.

282. PNK planned to hire its employees from the local Philadelphia community.

283. PNK has no business history. However, the record indicates that its parent company, Pinnacle, has a favorable record of compliance with applicable federal, state and local discrimination, wage and hour, disability and occupational, environmental health and safety, and labor relations and employment laws and a favorable record in dealing with employees and their representatives.

284. The proposed PNK site is currently zoned General Industrial which does not permit the use contemplated by the application. The area in which PNK's site would have been located has not been designated by Philadelphia Ordinance as a "Commercial Entertainment District" area (Philadelphia Code § 14-401 et. seq.). Under the ordinance, the City Council has authority to rezone the proposed PNK site to the new district upon recommendation of the City Planning Commission. Once rezoned pursuant to the Ordinance, the use contemplated by PNK would have been permissible.

285. PNK owned some, but not all, of the riparian rights along the riverfront of the proposed site.

286. PNK's proposed site was located with a few miles of Chinatown, Center City Philadelphia and downtown hotels, restaurants and bars.

287. PNK asserted that Interstate 95 created a buffer between the proposed site and the adjacent neighborhood, with the residential areas of the Fishtown community on

the westerly side of Interstate 95 and the proposed project site on the easterly side. Interstate 95 in that area is an elevated highway, permitting access to the site from neighborhoods under the elevated highway and providing somewhat less of a barrier than at other sites.

288. PNK submitted a traffic study to the Board which was reviewed by Edwards and Kelcey.

289. PNK's traffic impact report showed that 80% of the patrons would have accessed and departed the site via Interstate 95.

290. A planned interchange project, the Girard Avenue Interchange project, is scheduled for completion in 2012, which would allow enhanced access to both Girard Avenue and Delaware Avenue in the vicinity of the proposed PNK project.

291. PNK's traffic study proposed to alleviate delays associated with the development of its project by signal timing and coordination adjustments, roadway widening at select locations and traffic signal installations at three locations along Richmond Street, Dyott Street and Cumberland Street at Girard Avenue.

292. Review of the plan by Edwards and Kelsey of PNK's traffic impact study found that because PNK's study did not adequately address the additional traffic in that three-year window between the Phase I casino opening and the completion of the Girard Avenue interchange in 2012, additional mitigation measures needed to be identified and more fully evaluated by PNK. Edwards and Kelsey further recommended a ten year projection and analysis be completed of the increased traffic to ensure acceptable conditions in the future.

293. PNK's proposed site was located near public bus transportation with a trolley line running close by.

294. Pinnacle has a history of supporting its host communities and stated it planned to do the same in Philadelphia. Through its other properties, Pinnacle stated that it has made numerous donations and sponsored events to generate funds to support its host communities and made \$1.5 million in charitable contributions in 2005.

295. Although PNK had discussions with local neighborhood groups, neither PNK nor its parent, Pinnacle, made any binding promises of support or commitments of any funding to any public or private entity related to licensure. Instead, the applicant would wait until opened and profitable before making any commitments.

RIVERWALK CASINO, LP ("RIVERWALK")

296. Riverwalk's proposed project would have been located along the Delaware River on approximately eleven and one half (11½) acres or 500,000 square feet of space that was formerly the old incinerator site and was comprised of Piers 28 N, 27 ½ N and 31-34.

297. The project proposed one phase of construction which included a casino, restaurants, lounges, retail space, a parking garage and an entertainment venue.

298. At the Public Input Hearing thirty-two (32) individuals testified. Two (2) state legislators testified with one supporting the project and one taking a neutral position. Three (3) local officials testified with one supporting the project and two taking neutral positions. Fifteen (15) representatives of community groups testified with seven (7) supporting the project, two (2) in opposition and six (6) with neutral comments. Twelve

(12) individuals testified with seven (7) supporting the project, two (2) in opposition and three (3) who expressed they needed more time to form an opinion.

299. Written comments were also received by the PGCB by the June 2, 2006, deadline specific to the Riverwalk project. Ten (10) comments were received with one (1) supporting the project and nine (9) opposing the project.

300. Those speaking or providing written comments in support cited reasons such as the casino being good for the economy by creating jobs, revenue and related tax relief and that it would add an element of entertainment to the city.

301. Those speaking or providing written comments in opposition cites reasons such as traffic congestion and parking issues, increased public safety issues; that the project is too small and did not allow for a buffer to the surrounding area and a decrease in property values.

302. On November 13, 2006, the PGCB conducted a public suitability hearing for the purpose of hearing additional testimony and evidence from Riverwalk concerning its application and proposed project and its eligibility and suitability for licensure pursuant to the Act. The hearing was continued into and concluded on December 4, 2006.

303. In addition to the public hearings, substantial time reviewing, analyzing and investigating the applications and various submissions was expended by the PGCB's Bureau of Licensing in processing and reviewing Riverwalk's application, the Bureau of Investigations and Enforcement investigating Riverwalk, its affiliates and key employee/qualifiers and the Bureau of Corporate Compliance and Internal Controls,

along with the Financial Suitability Task Force investigating the financial suitability of Riverwalk.

304. The application for a Category 2 license filed by Riverwalk is complete, all fees and costs which have been billed to Riverwalk have been paid as required, all required bonds and/or letters of credit were posted and Riverwalk and its affiliated parties consented to and have undergone background investigations as required by the Act.

305. Riverwalk is a Pennsylvania limited partnership that was formed on October 28, 2005, for the purpose of acquiring a Category 2 slot machine license and developing, owning and operating the Riverwalk Casino project.

306. Riverwalk is owned 1% by Riverwalk Casino GP, LLC, as its general partner and 99% by PA Financing LP, as its limited partner.

307. Riverwalk Casino GP, LLC, is owned 51% by the Pennsylvania Partnership Group, LP and 49% by BHM Gaming Opportunities, Ltd.

308. PA Financing LP is owned 50.49% by the Pennsylvania Partnership Group, LP and 23.50 % by BHM Gaming Opportunities, LTD, a joint venture controlled by Robert Earl and Douglas Teitelbaum with the remaining interest in PA Financing LP owned by PA HoldCo, LLC (12%), Plainfield Gaming, Inc. (6%), BH Casino and Hospitality, LLC (3.150%), York Select, LP (1.125%), C. Patrick McKoy (1.01%), York Capital Management, LP (.975%), Scoggin Capital Management, LP II (.75%) and Riverwalk Casino GP, LLC (1%).

309. The Pennsylvania Partnership Group, LP is owned 1% by the Pennsylvania Partnership Group, LLC as its general partner and 99% by Individual PPG Investors. These same investors are the 100% owner of the Pennsylvania Partnership

Group, LLC. These investors are individuals from the Philadelphia area and include: William Anderson, Barry Crawford, Obra Kernodle Family Trust, Whytni Kernodle-Frederick, Walter Lomax, Bennet Lomax, Charles Lomax, Willie Johnson, Frank Canty, the CSR Irrevocable Trust, Thomas Leonard, Thomas Leonard Irrevocable Trust, Lisa Rodriguez, Ira Richards, Asuncion Munoz, Dennis Cook, John Tipton, PPG Partners' Blind Trust, Adam Kamens-profits, Adam Kamens-capital, Robert Bogle, Bruce Crawley, Perry Blackman-profits, Perry Blackman-capital, Joel Trigliani-profits, Joel Trigliani-capital, Charles Greene, Jerome Mondesire, Sunah Park and Timothy Woodward.

310. Control of Riverwalk would be through its general partner, Riverwalk GP and control of Riverwalk GP would have rested with a Board of Managers comprised of three (3) appointees of the Pennsylvania Partnership Group and two (2) appointees from BHM Gaming Opportunities. Had a license been awarded the Board would have expanded to include one (1) member from Plainfield Gaming. The Pennsylvania Partnership Group would have had six (6) votes, BHM Gaming would have had four (4) votes and Plainfield Gaming would have had one (1) vote for a total of eleven (11) votes.

311. Some decisions concerning Riverwalk required a "super-majority" consent of the Board of Managers. However, daily operations of Riverwalk were controlled by an Executive Committee which was controlled by BHM Gaming Opportunities.

312. The PGCB did not utilize alternative licensing standards during the course of its investigation of Riverwalk's application.

313. The following entity qualifiers, affiliate qualifiers and key employee/qualifiers of Riverwalk consented to and have undergone required background

investigations: PA Financing, LP, Riverwalk Casino, GP, LLC, the Pennsylvania Partnership Group, LP, the Pennsylvania Partnership Group, LLC, BHM Gaming Opportunities, Ltd., BHM Gaming Opportunities GP, LLC, BH Casino and Hospitality, LLC, RIE, Ltd., RIE, LLC, PPG Partners' Blind Trust, Plainfield Gaming, Inc., PA HoldCo, LLC, Plainfield Direct, LLC, Dennis Cook, William Miller, IV, Kenneth Trujillo, Leslie Levi, Joseph Bencivenga, Ronald Johnson, Howard Trauger, John Tipton, Samuel Staten, Sr., Cyril McKoy, Douglas Teitelbaum, Robert Earl, Willie Johnson, Achim Holmes, Bernard Smalley, Sr., Herman Wooden, Mary Lawton, Joseph Ashdale, York Capital Management, LP, York Select, LP and Scoggin Capital Management, LP II.

314. The following entity requested a waiver of its obligation to be licensed claiming it is an outside director of an affiliate, intermediary, subsidiary or holding company of Riverwalk, is not a member of the audit committee and is not significantly involved in the management or ownership of Riverwalk: Penn's Landing Corporation.

315. Rene Amore filed a key employee/qualifier application but subsequently requested to withdraw her application. The withdrawal was approved by the PGCB.

316. Neither Riverwalk, nor any person affiliated with Riverwalk, is a party to any ongoing civil proceeding seeking to overturn a decision or order of the PGCB or the Thoroughbred or Harness Racing Commissions.

317. Riverwalk does not possess any ownership or financial interest in any other slot machine licensee or person eligible to apply for a Category 1 license, its affiliate, intermediary, subsidiary or holding company.

318. Neither Riverwalk, nor any of its affiliates, subsidiaries, intermediaries or holding companies, hold any interest in a supplier or manufacturer license.

319. No public official is a key employee/qualifier or has any prohibited financial interest in, or is employed by Riverwalk or any related entity.

320. Two of Riverwalk's key employee/qualifiers, Joseph Ashdale and Samuel Staten, Sr., made political contributions that were in apparent violation of the Act. However, the PGCB and these two individuals entered into a consent decree with regard to these violations. The consent decree required the individuals to retrieve the contributions made and pay fines set by the PGCB and for Riverwalk to pay a fine with regard to the violations.

321. Further investigation did not reveal any other political contributions made by Riverwalk or any of its key employee/qualifiers that were in violation of the Act.

322. Riverwalk satisfied all local, state and federal tax obligations.

323. Investigation did not reveal that Riverwalk or any of its affiliates, directors, owners or key employee/qualifiers have been convicted of a felony or gambling offense in violation of the Act.

324. Investigation did not reveal any information that would indicate that Riverwalk or any of its affiliates, directors, owners or key employee/qualifiers is of unsuitable character.

325. Information gathered during the course of BIE's investigation concerning Riverwalk and its key employee/qualifiers did not reveal any information concerning bankruptcies⁷, civil lawsuits or judgments, criminal convictions, past activities or business practices, business associates or dealings, or any other information concerning

⁷ Evidence was provided concerning the bankruptcy of Planet Hollywood, an entity whose CEO has an ownership interest in the Riverwalk project. That matter does not disqualify the applicant from consideration

the honesty, integrity, family, habits or reputation that would prohibit licensure of Riverwalk or its key employee/qualifiers.

326. Riverwalk was a newly formed entity with no business history. Therefore, the PGCB Financial Suitability Task Force performed an evaluation of Riverwalk's financial fitness and suitability by examining its key employee/qualifiers, its financial wherewithal for developing the proposed gaming facility and the ultimate sources of the funding to develop the project and did not find anything financially material that would preclude Riverwalk from obtaining a Category 2 slot machine license.

327. On November 13, 2006, the PGCB Financial Suitability Task Force projected a revenue estimate for Riverwalk of approximately \$418.5 million annually in a stabilized year in 2005 dollars, with a \$229 win per position per day at 5,000 machines.

328. Riverwalk provided to the Task Force projections of its revenues estimated at \$378.1 million annually in a stabilized year in 2005 dollars, with a \$207 win per position per day at 5,000 machines.

329. Riverwalk's estimate was 9.6% less than the estimate of the PGCB Financial Suitability Task Force.

330. Riverwalk indicated and investigation revealed that it had the ability to pay the \$50 million licensing fee and to post the \$1 million bond required if a Category 2 slot machine license had been issued to Riverwalk.

331. Based upon the representations by Riverwalk and investigation by the PGCB Financial Suitability Task Force, Riverwalk was likely to maintain a financially successful, viable and efficient business operation which would maintain a steady level of growth and revenue.

332. Riverwalk had a good faith diversity plan in place. Riverwalk's diversity statement provided for equal employment opportunity for all persons without regard to race, creed, color, religion, gender, age, sex, sexual orientation, AIDS or HIV status, national origin, veteran status, marital status, disability related to childbirth or pregnancy, non job-related disability, citizenship status or status with regard to public assistance.

333. Riverwalk was in the process of developing its diversity plan with local area community leaders and diversity consultants and it hosted several Town Hall meetings to discuss issues relating to diversity with local residents.

334. Riverwalk had submitted a Compulsive and Problem Gaming Plan with its application, but the plan required amendment as it did not fully address all the criteria for development, employee training items, self-exclusion training and underage gambling. In addition, the plan did not express any intent on the part of Riverwalk to comply with the Act's signage requirements. The status of this plan does not exclude a finding of eligibility and suitability at this time.

335. Riverwalk's site was to be located along the Delaware River, on Delaware Avenue at the terminus of Spring Garden Street and near the Vine Street Expressway (Interstate 676) and the Ben Franklin Bridge.

336. Riverwalk had an option to sublease the property for the proposed site from Penn's Landing Corporation.

337. It is not clear if Riverwalk, through the sublease from Penn's Landing, possessed the necessary riparian rights for the project.

338. Riverwalk planned two (2) phases of the project with an estimated cost of \$500 million. The plan did not include a temporary casino facility.

339. The first phase of the project included a gaming floor with 3,000 slot machines. The second phase of the project included the addition of 2,000 slot machines. Riverwalk was committed to building and financing both phases of the project at an approximate cost of \$ 495 million.

340. The total project also included a 400 seat entertainment venue, a television and radio studio, six (6) restaurants with river views including a food court, coffee shop and mix of casual dining eateries, two (2) lounges and a nightclub, retail space and over 3,500 parking spaces. A river promenade was to extend all the around the outside of the property.

341. Riverwalk's design plan was compliant with the City of Philadelphia's ordinance creating a "Commercial Entertainment District" which, among other things, permits licensed gaming facilities.

342. Riverwalk estimated that its project would provide approximately 1,000 quality, living wage casino jobs.

343. Riverwalk estimated that its construction project would provide approximately 500 temporary construction jobs.

344. Riverwalk was a newly formed company with no business history. However, no negative history was found with regard to records of compliance with applicable federal, state and local discrimination, wage and hour, disability and occupational, environmental health and safety, and labor relations and employment laws, or dealings with employees and their representatives with regard to any individual involved in the project. In addition, there was previous experience by BHM Gaming Opportunities with the union UNITE HERE.

345. Riverwalk had entered into a management agreement with BHM Gaming Opportunities, Ltd. ("BHM Gaming") for the development and operation of the Riverwalk Casino project for which BHM Gaming would have been entitled to 5% of gross project receipts plus 10% of EBITDA over established EBITDA targets. The PGCB would have had to approve this agreement.

346. BHM Gaming is a joint venture controlled by Robert Earl and Douglas Teitelbaum. These two individuals are co-chairmen of Planet Hollywood Resort and Casino in Las Vegas, Nevada, formerly known as the Aladdin Hotel and Casino.

347. Neither Riverwalk, nor any of its affiliates, own any casino properties in Atlantic City, New Jersey.

348. In December 2005, Riverwalk submitted a traffic study which included a four (4) intersection study area. The study identified two key peak traffic hours, one during a weekday afternoon and the second on a Saturday afternoon. The study estimated new trip generations from the casino project to be 1,430 cars during the weekday peak hour and just over 1,900 cars during the Saturday peak hour. The study anticipated that seventy percent (70%) of the vehicles would use the Interstates for access to the casino site.

349. Traffic mitigation identified in the study included adjusting signal timing and coordination at key locations along Delaware Avenue, specifically at Spring Garden Street, installation of additional turning lanes at intersections to increase the capacity of the intersections and the installation of a new traffic signal at an intersection.

350. Riverwalk's proposed site was also accessible by public transportation.

351. Edwards and Kelcey reviewed this initial traffic study and concluded that the scope of the study area was too limited and should have included all intersections between the site and the interstate access points and that a ten year projected analysis should be performed.

352. Riverwalk responded stating that it was committed to mitigation of traffic and would fund all necessary infrastructure improvements, and that it also planned to hire a traffic coordinator when the casino was opened.

353. Riverwalk had a binding commitment to fund costs of traffic mitigation, emergency medical services and police projection through a special services district agreement, which was a requirement of their lease with Penn's Landing Corporation.

354. Riverwalk also committed to funding \$2 million of fine arts improvements in conjunction with approvals from the Philadelphia Arts Commission.

CONCLUSIONS OF LAW AND COMPARATIVE DISCUSSION

The decision as to which two of the five eligible and suitable proposals would receive the award of the two Category 2 slot machine operator licenses in Philadelphia was a very difficult one calling for the Board to weigh five competitive, yet unique and different proposals to determine which two the Board, in its sole discretion, believed to be the best fit for the Commonwealth and the public in light of the various factors which may be taken into consideration under the Act. If the Board's decision was premised on an objective formula or defined scoring system such as one based only on the revenue to the Commonwealth to support property tax relief or on the number of slot machines or the number of projected visitors, the analysis of the Board in reaching its decision would be much more simplistic. But that is not the case or the task assigned to the Board under the Act. The Act embodies multiple objectives to be considered by the Board, including the protection of the public through regulating and policing all activities involving gaming, enhancing entertainment and employment in the Commonwealth, providing a significant source of income to the Commonwealth for tax relief, providing broad economic opportunities to Pennsylvania's citizens, developing tourism, strictly monitoring licensing of specified locations, persons, associations, practices, activities, licensees and permittees, considering the public interest of the citizens of the Commonwealth and the social effects of gaming when rendering decisions and maintaining the integrity of the regulatory control of facilities. 4 Pa.C.S. §1102.

In addition, the General Assembly specifically indicated its intent and goal that the Board promote and ensure diversity in all aspects of the gaming activities authorized under the Act. 4 Pa.C.S. §1212(a). The Board also believes this to be an important goal

to be implemented and encouraged in the gaming industry for the benefit of all citizens and fully intends to assure that diversity of representation is enhanced in accordance with the Act. Accordingly, the Board also looks to the factors of the representation of diverse groups in the ownership, participation and operation of an applicant for a license as provided for in Sections 1212, 1325(b) and 1325(c)(3) of the Act when evaluating the applicants for licensure.

As we have set forth above, in weighing the evidence presented to the Board with respect to these objectives and to determine which applicants should be approved for licensure, Section 1325 of the Act provides that the Board may consider factors including:

- the location and quality of the proposed facility, including, but not limited to, road and transit access, parking and centrality to market service area, Section 1325 (c)(1);
- the potential for new job creation and economic development which will result from granting a license to an applicant, Section 1325 (c)(2);
- the applicant's good faith plan to recruit, train and upgrade diversity in all employment classifications in the facility, Section 1325 (c)(3);
- the applicant's good faith plan for enhancing the representation of diverse groups in the operation of its facility through the ownership and operation of business enterprises associated with or utilized by its facility or through the provision of goods or services utilized by its facility and through the participation in the ownership of the applicant, Section 1325 (c)(4);
- the applicant's good-faith effort to assure that all persons are accorded equality of opportunity in employment and contracting by it and any contractors, subcontractors, assignees, lessees, agents, vendors and suppliers it may employ directly or indirectly, Section 1325 (c)(5);
- the history and success of the applicant in developing tourism facilities ancillary to gaming development if applicable to the applicant, Section 1325 (c)(6);
- the degree to which the applicant presents a plan for the project which will likely lead to the creation of quality, living-wage jobs and full-time permanent

jobs for residents of this Commonwealth generally and for residents of the host political subdivision in particular, Section 1325 (c)(7);

- the record of the applicant and its developer in meeting commitments to local agencies, community-based organizations and employees in other locations, Section 1325 (c)(8);
- the degree to which potential adverse effects which might result from the project, including costs of meeting the increased demand for public health care, child care, public transportation, affordable housing and social services, will be mitigated, Section 1325 (c)(9);
- the record of the applicant and its developer regarding compliance with Federal, State and local discrimination, wage and hour, disability and occupational and environmental health and safety laws; and State and local labor relations and employment laws, Section 1325 (c)(10); and
- the applicant's record in dealing with its employees and their representatives at other locations, Section 1325 (c)(11).

Thus, the Act calls for the Board to consider evidence and give weight to factors as it, solely in the exercise of its discretion, finds to be in the furtherance of the Act's objectives based upon all of the evidence in the evidentiary record before the Board. It is upon this basis that the Board approves and denies the license applications now before it.

After reviewing the entire evidentiary record for each of the five (5) applicants, the Board has determined that **HSP, Sugarhouse and Philadelphia Entertainment and Development Partners, Foxwoods**, represent the best fit following a complete review of all applicants for Category 2 licensure in the City of Philadelphia. In reaching this conclusion, the Board has examined and weighed the various factors cited above. However, there were several factors that, in the Board's opinion, made HSP and Philadelphia Entertainment's projects stand out above the remaining applicants.

First, both HSP and Philadelphia Entertainment are located on the riverfront and have excellent design plans for their facilities. Neither have riparian rights issues because if they are not successful in securing riparian rights⁸, they both have alternate plans to build quality facilities without the need for these rights. The synergy provided by the riverfront locations and the proximity to Center City and the downtown Philadelphia area were positive factors.

Second, the location of each facility, as it relates to the other, creates the most advantageous locations. Both locations are largely separated from primary residential areas by Interstate 95 and it is anticipated that a significant amount of the patrons coming to the casinos will use Interstate 95 to access the sites. In addition, siting one location on the North Delaware Avenue corridor and the other location farther south and below the Ben Franklin Bridge, will spread out the patron traffic and avoid the traffic congestion that having two sites located close together would invariably bring to Philadelphia.

Additionally, HSP has the least community opposition voiced to the Board concerning its proposed project, HSP plans to have an interim facility that will be in operation within twelve (12) months of licensure, its partners have experience in the gaming industry, and HSP has made a significant commitment to the community. Philadelphia Entertainment has a strong partner in Foxwoods, an investment grade business with years of experience in the gaming industry, in has diversity in its ownership and at least forty-two percent (42%) of the profits will flow to irrevocable charitable trusts to be used for charitable purposes in the Philadelphia area. Finally,

⁸ The Board recognizes that similar questions regarding riparian rights existed for the other river front applicants.

neither HSP nor Philadelphia Entertainment has ties to any casino properties in Atlantic City, New Jersey which could provide competition to lure customers to another site.

While all the factors set forth in the Act were examined and considered by the Board when reaching its decision to award HSP and Philadelphia Entertainment the available slot machine licenses, these were factors which made these two projects stand out in the crowd. The following discussion sets forth a more detailed analysis of these factors and the weight given the evidence relating to the factors by the Board.

A. Location and Traffic

Location

The Philadelphia projects present five casino projects in three general locations: (1) HSP/Sugarhouse, Pinnacle/PNK and Riverwalk, located East of Route 95, north of the Benjamin Franklin Bridge, and between North Columbus Blvd/North Delaware Avenue and the Delaware River (referred to as the "North Delaware Avenue" location); (2) Philadelphia Entertainment Development Partners' Foxwoods' site, located East of Route 95 between South Columbus Boulevard and the Delaware River in South Philadelphia (referred to as the "Foxwoods" location); and (3) Keystone Redevelopment Partners' TrumpStreet site located in North Philadelphia East of the Schuylkill River and just off Route 1 (referred to as the "TrumpStreet" location). Each of the three locations bring with it perceived advantages and disadvantages as testified to at length by each of the applicants during the final licensing hearings. The Board has considered the locations not as dispositive, but as influential, and as one of the many factors in its review of the projects, along with how that location may affect other criteria examined and considered.

Because there are three general locations, two of which are along the Delaware River, it is clear that at least one of the two casinos must be located along the River. In the Board's view, if the Board approved one of the North Delaware Avenue locations for a license, then the Board is constrained to eliminate the other two locations in the same general vicinity for reasons of traffic management as discussed below. In essence, while credible testimony was presented to establish that additional traffic associated with one casino along North Delaware Avenue could be adequately managed through mitigation and road improvement measures, the Board has not been presented with sufficient, credible evidence to permit the Board to find that the increased traffic associated with two casinos in the same general area could be adequately managed along the North Delaware Avenue corridor. Further, the distance between these sites is such that walking between them is not feasible. Therefore, additional traffic would be generated by patrons desiring to visit both. Accordingly, the Board finds that only one casino can be sited in the North Delaware Avenue area.

Subject to this limiting conclusion, the Board finds the North Delaware Avenue corridor and the Foxwoods location in South Philadelphia to be desirable locations for casino development. Both locations have significant advantages in that they are largely separated from primary residential areas by Interstate 95 and therefore should not have significant impacts on larger residential areas.⁹ It also is anticipated that a significant amount of traffic to these locations will arrive via Interstate 95, providing just a short drive from the interstate to the casino properties.

⁹ The Board notes that Interstate 95 in the area of the Pinnacle project is an elevated roadway and therefore does not provide a buffer to the neighborhoods to the extent it does in other areas.

Also significant in the Board's opinion and to its decision is the Delaware River which flows past these two locations. The River-view properties provide an exciting yet tranquil setting for the building of a new industry in Pennsylvania, providing opportunities for the development along the river-front not only of casinos, but also of hotels with associated amenities which will spur other riverfront economic development. Further, as several proposals have demonstrated, the River can actually be incorporated into the proposals creating a synergy between the Delaware River, the waterfront properties and the City. Finally, the riverfront locations are each located to take advantage of their access to center-city Philadelphia, the convention center, hotels and other existing Philadelphia business and attractions in a way that provides easy access to a host of visitors and tourists for entertainment while staying in Philadelphia.

The location of Keystone's Trump Street proposal brings with it many questions related to the potential success of the operation. Located in an older, residential/commercial mixed use area of North Philadelphia and sandwiched between the Tioga, South West Germantown, Allegheny West and East Falls neighborhoods, and near areas economically depressed with decaying infrastructure and residential properties, Keystone's Trump Street proposal champions the location as one which can invigorate a depressed neighborhood bringing needed jobs and redevelopment. The Board sees this as a *Field of Dreams* scenario of "if you build it, they will come." Trump Street offers that if the casino is built, patrons will flock to the Trump Street casino with the effect of bringing millions of dollars which in turn will provide jobs to neighborhood residents who will spend their money to upgrade their neighborhoods and give reason for commercial business to reenter those same neighborhoods. The Board

does not find that the evidence supports this contention. The Board finds that Trump Street has not met its burden in demonstrating the project will support the economic stimulus suggested as the Board is not convinced by the evidence presented that all of that speculative redevelopment activity and benefit would occur as envisioned.

The Trump Street location also lacks a feature of the waterfront properties which the Board finds to be important to the siting of the HSP and Foxwoods casinos along the river front. The Board has found that the river front properties create a synergy between the Delaware River, the waterfront properties and their access to center-city Philadelphia and the other attractions located there. The Trump Street location, unlike those of HSP and Foxwoods, is lacking a similar synergy with the existing Philadelphia tourist and business and restaurant opportunities which are tried and proven draws for the City.

Further, the Board finds the building of a casino at the Trump Street location raises concerns in terms of the effects on the surrounding residential areas. That location is surrounded on all sides by residential areas which will bear some degree of the traffic associated from the casino as patrons traverse the various streets and highways to arrive at the site. In short, while the Board recognizes that this project brings with it hope for revitalization and jobs to that area, the Board also recognizes its duty to the Commonwealth as a whole in bringing casino sites to fruition which have the best chance for long-term success, economic development and other associated benefits and simply is not convinced that the Keystone Trump Street site is one of the best sites among those available to accomplish these goals.

Traffic

The PGCB finds, based upon the record evidence, that traffic is a concern at all three general locations and with respect to all five properties. Traffic congestion is detrimental to a proposed casino since patrons may not attend the casino if access is difficult or results in substantial delays in arriving at the casino. Likewise, significant additional traffic congestion does not serve the public interest of those living in surrounding neighborhoods and commuters who use the surrounding road network for daily non-gaming uses.

i. North Delaware Avenue traffic

With respect to all three proposals for the North Delaware Avenue area, the Board finds based upon the evidence presented that a number of traffic issues have been identified and a number of traffic mitigation measures proposed. The Board finds credible the evidence of Edwards & Kelcey that further analysis of this area should be conducted in order to achieve satisfactory traffic mitigation plans and also finds that traffic mitigation efforts can alleviate additional traffic in this area to accommodate increased traffic. It is incumbent upon the Board to insist that such measures be addressed through conditions to the license.

In addition, traffic management in the North Delaware Avenue area will rely, in part, on the planned Girard Avenue interchange improvement which is anticipated to be completed in the year 2012. The Girard Avenue Interchange will link Interstate 95 directly to Delaware Avenue and absorb a significant amount of casino traffic in this area. The Board acknowledges that the applicants all proposed opening a casino prior to the completion of that date and, therefore, there will be period of time in which traffic in

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this area may be detoured or inconvenienced due to the construction. However, the Board finds that based upon the evidence, the projections of traffic and the projected opening dates of the final phases of the casino projects which will generate the largest patron visits, the Girard Avenue interchange when completed will provide another route for traffic exiting Interstate 95 to the North Delaware Avenue area, will assist in channeling traffic into the casino and will assist as a long-term solution to mitigate traffic congestion otherwise associated with the casino.

As stated with respect to the locus decision of the Board, the Board is very concerned about the prospect of siting two casinos in the North Delaware Avenue region because of detrimental effects of traffic as well as the impact that locating two casinos in close proximity would have on one neighborhood. Trip generation data provided by the applicants indicates that about 1615 to 1865 additional vehicles per hour during the projected peak hours would be expected in this area upon build-out of phase 1 of the casinos with 3,000 slot machines.¹⁰ Of course, an increase to 5,000 machines and more amenities will increase the trip generation data. While the Board has no doubt, based upon the evidence presented, that this area can absorb the increased traffic associated with one casino project, the Board has not received evidence satisfying it that this same area can currently, or with the currently-proposed mitigation measures, absorb the impact of additional traffic from two casinos which would create approximately 3230 to 3730 additional vehicle trips per peak hour plus potentially more with further build-outs. Likewise, there has been no evidence presented to support a contention that the spill-over effect of that much traffic would not affect any residential areas near the casino sites.

¹⁰ The trip generation estimates, which the Board finds credible and relatively consistent were obtained from the traffic studies submitted by applicants HSP and PNK to the PGCB and placed on the Board's website for public access.

To take any other position and site two casinos in the same location would not be consistent with giving due concern to the public interest in this matter.

In addition, the evidence presented by the applicants leads to another traffic related issue. The three proposals, although each in the same general area, are far enough apart that patrons could not easily walk from one to another. Therefore, if two licenses were granted to the North Delaware Avenue location, a patron of one would likely have to drive to the other casino should that patron desire to visit both in one outing – thereby adding additional traffic between those facilities in a limited area.

ii. Foxwoods site traffic

The Board finds credible the testimony and report of Edwards & Kelcey that most of the traffic issues identified as of November 1, 2006 have been addressed systematically and thoroughly. Philadelphia Entertainment/Foxwoods has committed to address any remaining issues upon licensing through continued work with PennDOT and the City of Philadelphia. The Board finds credible the evidence produced by the respective traffic engineers that traffic in the Foxwoods area can be successfully mitigated not only for the benefit of Foxwoods' patrons, but for the benefit of the surrounding community.

The Board recognizes the concerns of the South Philadelphia community related to increases in traffic associated with the Foxwoods project. However, as stated, the Board believes that the Interstate 95 buffer and access to the site along with the mitigation measures proposed will assist in alleviating current congestion. The Board was presented with credible testimony from Edwards & Kelcey engineer Cunningham that the mitigation measures proposed adequately address traffic and that "upon

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completion of the mitigation measures that have been identified in their study, that we will not see an increase in the amount of delay in and around the roadway network in the study area." See Philadelphia Entertainment's final licensing hearing transcript (11/14/06) at p. 17. The Board has not been presented with evidence which it finds supports a contention that the traffic situation operating under remedial mitigation measures will overburden or cause significant concerns for the area.

iii. Trump Street site traffic

As demonstrated in the November 1, 2006, report of Edwards & Kelcey, most of the traffic issues surrounding the Trump Street location that can be addressed have been addressed systematically and thoroughly. While there are no traffic issues with this proposal in terms of whether casino traffic can be managed from Route 1 and at the Trump Street site, Trump Street's location bordering and near residential neighborhoods, however, raises another traffic issue of concern to the Board. Specifically, as has been a concern of the public about this project, the Board is concerned about the effect traffic will have on the bordering residential neighborhood areas including further traffic congestion through a number of local intersections surrounding the proposed facility. The Board finds it significant that the Trump Street location does not have a large buffer from residential areas like the riverfront areas which have Interstate 95 running between the casino project sites and major residential neighborhoods. The Board finds credible evidence that various residential streets will be used to travel from other points in Philadelphia to the Trump Street site and that the increase in traffic from a casino would likely cause detrimental affects to the surrounding neighborhood in this respect.

It would be disingenuous to say that traffic associated with the casinos will have no impact on the surrounding areas and the Board does not suggest such. However, while every project would increase traffic in the vicinity of the casinos as a natural by-product of the patron-driven business, the Board finds based upon all of the evidence that the impact can best be managed and mitigated at the two Delaware River sites, which each have Interstate 95 as a buffer between the casino's and major residential areas. While we also believe that the Trump Street site could affect mitigation measures, the presence of additional residential traffic in that area still raises serious concerns in the Board's view of the Trump Street site.

B. Quality of the Facility

All five proposals for casinos and related-use facilities represent state-of-the-art architectural designs, all of which have their own unique nuances. Each project is phased into production with initial phases to gain operational status and income while work is expanded at the sites to build the permanent facilities. Even the permanent facilities have additions to come later depending on market conditions. While the Board is cognizant that all phases of development are not committed to and that later phases of the projects are market dependent, the Board looks to the overall proposals in this section as reflective of the quality of the facilities.

HSP/Sugarhouse provides a vibrant complex on a 22 acre peninsula extending into the Delaware River with a phased development including a proposed 500 room hotel and spa, event center, 4,250 parking spaces, 5,000 slot machines, a marina, water fountains, riverside sculpture garden and side-perimeter access for the public to the Delaware River. With entrances both off Delaware Avenue and from the river marina,

the HSP proposal takes full advantage of the Delaware River frontage to present a first class facility which would instill pride in any city.

Philadelphia Entertainment/Foxwoods' project located on a 16 acre parcel of property includes the phased development of 5,000 slot machines, a 500 room hotel and spa, condominiums, a 2,500 seat theater, 6,000 parking spaces and amenities. Like other riverfront projects, Foxwoods incorporates the riverfront and an entertainment complex built over Pier 60 which includes water-taxi access and day-use docks. The entrance from Columbus Boulevard presents a modern yet somewhat subdued appearance. However, the facility comes to life upon entering and the casino, located in the rear of the facility, is transformed into a bright, active entertainment destination.

Keystone's Trump Street project that would have been built on a 30.1 acre site which formerly, in part, was home of the Budd Manufacturing Company which manufactured the Zephyr Rail Cars, presents a modern upscale design of the former industrial site with rounded corners, glass and a spiraling tower jutting skyward and featuring 5,000 slot machines through 3 phases, a hotel and special events and performance center, a 3 screen cinema, restaurants, bars and retail shops.

The PNK casino promotes itself as connecting the community to the Delaware River and does just that. The casino project to be situated on a 33 acre parcel has the riverfront as its focus as the riverside of the structure forms a semi-circular form surrounding a large manmade pond which appears as a river inlet but actually is a separate body of water which turns into an ice-skating rink in the winter and a dramatic water fountain and reflecting pool in the summer. The entire project through 3 phases includes up to 5,000 slot machines, restaurants, bars and entertainment centers, a 12 to

14 screen theater, 5,000 parking spaces and significant retail space. In addition, a 500 room hotel tower and a residential/commercial tower is incorporated into the master plan. Access to the casino is also available through a small marina built on the PNK site along the Delaware River.

The Riverwalk project provides a clean classic stone and glass three level structure with a seven-story parking garage, and river promenade to the sides and rear of the property providing public walking access to the Delaware River. The architectural design provides ample views of the river, the surrounding walkway and the nearby Benjamin Franklin Bridge from the restaurant and terrace dining areas, as well as a 400 seat entertainment venue, retail shops and a television studio. Through all phases, the structure will accommodate up to 5,000 slot machines with first class finishing touches. The size of the Riverwalk parcel of property presents an area of concern for the Board. At just 11.5 acres, the Riverwalk site is the smallest property for casino development in Philadelphia and provides for a comparatively very compact project. In terms of potential and flexibility for development, Riverwalk's restricted area provides the least advantageous property for consideration in the Board's view.

Additionally, the Board finds that one very desirable quality of the riverfront properties is direct access to and from the Delaware River which promotes a synergy between the Delaware River and the City waterfront properties. Direct access from Delaware River is incorporated into the projects of PNK, HSP/Sugarhouse and Philadelphia Entertainment/Foxwoods¹¹. The Riverwalk facility does not propose a marina or other access from boating traffic, but does provide walking access to the river

¹¹ The Foxwoods' proposal presented two alternate scenarios for development of the waterfront depending on whether it acquires riparian rights or not. Thus, should one plan not come to being, the alternative scenario demonstrates planning to incorporate a waterfront entertainment destination into the plan.

for the public. During its hearing, Riverwalk provided what in the Board's opinion was uncertain testimony as to whether it even had riparian rights at that site which would permit access from the river.

The "quality of the facility" factor is one hard to quantify in any objective formulation. As stated, each facility is unique and possesses state of the art design techniques. In some respects, all of the projects are the same or similar in that a similar number of slot machines will be housed within, parking garages will be incorporated and restaurants and bars will serve patrons very similar drinks and foods. The Board reviewed all aspects of the architectural presentations and plans of all facilities and after careful consideration and evaluation has formed its choices that HSP and Philadelphia Entertainment/Foxwoods proposed the best facilities for the Philadelphia area.

Given the five choices, the Board finds two proposals to be of a similar quality which the Board finds should define the new casino industry and gaming establishments in Philadelphia. Those two proposals are HSP/Sugarhouse and Philadelphia Entertainment/Foxwoods. In the Board's opinion having weighed the record evidence, these two proposals capture the essence of what the Board finds to be right for Philadelphia – the development of the Delaware Riverfront in a manner taking advantage of sweeping views, easy access from a major interstate and the river, all in an atmosphere of upscale grandness.

C. Potential for New Job Creation and Economic Development

One of the objectives of the Act is to provide a significant new source of revenue to the Commonwealth to support property tax relief, wage tax reduction, economic development opportunities and other similar initiatives. 4 Pa.C.S. §1102(3). The Act

also provides that the Board may consider the potential for new job creation and economic development which result from granting a license to an applicant. 4 Pa.C.S. §1325(C)(2).

i. Revenue generation

Evidence produced during the hearing process demonstrated to the Board's satisfaction that the five proposals were relatively consistent in terms of the amount of revenue which would be realized once the casinos were developed and operating at capacity. This is of concern to the Board because the success of the applicants in generating revenues is directly related to the economic benefit to the Commonwealth through the receipt of tax revenues for the benefit of Pennsylvania citizens. The Financial Suitability Task Force projected HSP/Sugarhouse; Keystone; PNK and Philadelphia Entertainment/Foxwoods at \$310.8 million at 3,000 machines or \$284 win per unit in a stabilized year and Riverwalk had estimated annual revenues of \$418.1 million at 5,000 machines or \$229 win position per unit in a stabilized year based upon those applicants proposed 5,000 slot machines. The applicants' own projections were HSP/Sugarhouse: \$320.3 million annually and \$292 win per unit; Keystone: \$399.4 million annually and \$365 win per unit; PNK: \$338.7 million annually and \$309 win per unit; Philadelphia Entertainment/Foxwoods: \$338 million annually and \$309 win per unit; and Riverwalk: \$378.1 million annually and \$207 win per unit.

At first glance based upon the Task Force estimates, it appears that Riverwalk will be more profitable than the other casinos. Based upon an examination of the evidentiary records, the Board finds there is no significant difference in the revenue estimates. Riverwalk's revenue generation estimates were based upon an assumption

that 5,000 machines would be operational by the stabilized year. The number of machines is based upon that number for which financing was in place at the time of the hearing. The other casino applicants' projections were based upon 3,000 machines because that is the number of machines in the committed-to phases of the building projects. Each of those applicants provided credible testimony that they would proceed to their subsequent expansion phase and increase up to 5,000 machines with Board approval if the market supports that expansion. Even Riverwalk could not unilaterally expand from 3,000 to 5,000 machines without Board approval. The Board must approve that expansion based upon factors which can include the potential benefit to economic development, employment and tourism, enhanced revenues to the Commonwealth and other economic indicators it deems applicable in making its decision. *See* 4 Pa.C.S. §1210. Thus, the expansion for any applicant would be conditioned on the economic viability of the expansion as determined by the Board. Although they have the financing in place, if Riverwalk did not show usage and economic activity sufficient to support 2,000 additional machines, the Board would not be obligated to permit the expansion. Likewise, if another casino demonstrated that 3,000 machines were utilized to such an extent that expansion was warranted, then market conditions would warrant an expansion for their facility as well. In sum, market conditions will dictate the number of machines over the 3,000 threshold number at any of the properties. This was illustrated by testimony that more machines do not necessarily translate to more revenues if the market demand is not present for the additional machines. Rather, a supply/demand balance must be achieved so that enough machines are present to fulfill the public's demand.

Otherwise, the economic benefits to the operator suffer which could ultimately affect the benefits to the Commonwealth.

Keystone, recognizing as did all applicants, that one casino must be placed along the Delaware River, introduced evidence in support of its proposal to support a contention that having one casino on the riverfront and one (the Trump Street casino) in North Philadelphia would create more revenue for the Commonwealth. The thought underlying this theory is that two casinos in the same vicinity will pull patrons from the same close market area whereas the Trump Street site would complement the Delaware River site and actually expand the geographic area from which the majority of patrons for Philadelphia casinos would arrive, thereby increasing the number of overall patrons in the immediate geographical market. Trump Street submits that there are as many as 2.2 million more people in the geographic market if the two casinos are separated than if the two casinos are both on the Delaware River.¹²

Trump Street's argument does have a certain theoretical appeal ... if the casinos and locations were equal and comparable. As discussed above, however, the Board finds based upon the evidence presented that the Trump Street location is not equal to the riverfront locations in terms of the desirability of its own location and the surrounding neighborhood factors. Therefore, the Board is not convinced that the revenue generated under this scenario would be greater by having Trump Street licensed than if there are two casinos on the river.¹³

¹² The Board notes that the Task Force projections did not find a difference in the revenue estimates based upon the Trump location being different from the riverfront.

¹³ Keystone Redevelopment Partners also asserted that Trump Street would benefit from the "Trump" name which is widely recognized. In light of the concerns about location, the Board is not convinced that the "Trump" name would overcome the significant disadvantages of the site location as outlined in this discussion.

ii. Creation of jobs

The Board finds credible evidence that each of the proposed projects would create new jobs and economic development. Of course, the extent of the new jobs or economic development is also related to the size and scope of the project and the amenities provided. Whether the scope and use of those amenities are fully realized leading to the fulfillment of the projected job numbers is speculative based upon the development of subsequent phases of the properties and the success of the facility and amenities.

Likewise, each applicant represents that they are firmly committed to hiring a substantial percentage of their employees from the local employment markets. The Board does not find any credible evidence that there appears to be any appreciable difference between the applicants in this regard.

iii. Economic development

The Board also finds that each of the proposals will bring economic development to their respective locales. The size and scope of the applicants' economic commitments to the initial phases of their projects being substantially similar, ranging from \$495 million for Riverwalk to \$525.6 million for Foxwoods.¹⁴ Undoubtedly, any and all of these projects would provide a significant economic boost to the Philadelphia labor market beginning with the construction phase and proceeding through opening. Likewise, each applicant provided substantial evidence that its respective project would generate additional spin-off jobs based upon the need for additional restaurants in the communities as well as to provide goods and services to those employed by the

¹⁴ PNK did not provide a definite estimate of the project cost, but instead provided a range of costs which are thought to be within this approximate range based upon the information which was provided.

construction and casino trades. Thus, the Board clearly finds that economic development both at the casino sites and in the nearby communities will be greatly enhanced by the grant of a license. Except as expressed concerns about the Trump Street site, the Board is unable to find that this economic benefit will be of greater significant in any one location however and, therefore, does not credit any project with a superior edge over the others in this regard.

The Board does find that, based upon the evidence, Pinnacle, PNK's parent company, has engaged in a rapid expansion of its gaming positions since 2000 throughout the United States, as well as in South America and the Bahamas, to gain a strong position in a national network of premium gaming facilities and entertainment properties. The evidentiary record establishes that Pinnacle currently has several large development projects pending in various stages of design or completion. The expansion projects of Pinnacle, while a symbol of its success, also bring with it concerns of the Board. Because Pinnacle is engaged in a number of other gaming acquisitions, expansions and building projects elsewhere, the Board questions whether the resources are present to provide the Philadelphia project with the degree of attention that other applicants who are not engaged in as much development elsewhere could bring to the Philadelphia market and whether Pinnacle would focus greater efforts at other properties which may be more capital intensive or profitable than the Philadelphia location. While the Board has not determined that Pinnacle lacks the ability to construct and operate the property, in a comparative setting such as present for the award of these licenses, this is a factor weighed by the Board in its consideration of the economic development factor.

The Board also notes that evidence was provided that Foxwoods possesses an investment grade bond rating and is not engaging in the development of new properties which will be competing against the Philadelphia site. The Board finds that this information is reflective of the financial strength of the company and supports the likelihood that Foxwoods has the ability to follow through on its commitments and promises. Foxwoods brings a history of strong management experience as evidenced by its Foxwoods' Connecticut property with 7,400 slot machines and 350 table games and other amenities, and which not only has developed into a major tourist destination and gaming spot in the Northeast, but has become the largest gaming resort in the world, hosting more than 45,000 visitors per day. The Board finds that Foxwoods' financial strength combined with its tremendous success in Foxwoods-Connecticut is a factor weighing in favor of Philadelphia Entertainment/ Foxwoods' economic development benefits in Philadelphia.

iv. Atlantic City competition

Throughout the final hearing process, some Philadelphia applicants presented evidence and answered questions of the Board concerning competition of Atlantic City casinos and cross marketing given the proximity of Atlantic City to Philadelphia. Specifically, one concern raised was whether, if a casino operator in Philadelphia also owned a casino in Atlantic City, would that operator use the Philadelphia market to gain patrons who would then be diverted to the Atlantic City property through promotional marketing in order to gain advantage of the lower tax rate for the casino in Atlantic City. In other words, the operator will obtain more profit from the same dollar gambled in

Atlantic City than it will in Pennsylvania because of the much higher tax rate which the operator must pay here.

The evidentiary record establishes that Keystone's parent company, Trump Resorts, owns three Atlantic City casinos and that PNK's parent company, Pinnacle, has recently purchased the former Sands property in Atlantic City for development of a casino. HSP/Sugarhouse, Riverwalk and Philadelphia Entertainment/Foxwoods do not own or control any Atlantic City properties. The Board has considered the fact of competing Atlantic City properties as a negative factor for licensure in Philadelphia. While the Board believes that each applicant desires to make a profit in Philadelphia if granted a license, the Board also is cognizant of its duty to license casinos in Philadelphia which are in the best interests of the Commonwealth and Philadelphia. The Board finds it credible that owners of casinos in both locations may attempt to use the Philadelphia property as a gambling-incubator to gain new customers who will then be lured to its Atlantic City properties where it can earn a much larger profit on every dollar gambled. Likewise, the Board finds applicants without Atlantic City connections are more strongly motivated to compete directly against the Atlantic City competition because they have no interest in diverting patrons to the casino which has a better tax structure for the casino. Additionally, evidence has been introduced that the Trump Entertainment properties in Atlantic City have undergone bankruptcy reorganizations in order to rebuild and revitalize them. The Board believes this further supports its decision to choose other applicants who do not have other facilities so close to Philadelphia which may lure patrons to Atlantic City to assist in the rebuilding and revitalization of properties there. Therefore, the Board finds that licensing casinos in Philadelphia which do not have

common ownership with Atlantic City facilities are more likely to further the interests of the Commonwealth and the public which stands to benefit through increased revenues obtained by the Pennsylvania properties.

v. **Community and other commitments**

Each applicant made various commitments and promises to the communities served. These commitments typically are promises to provide funding for various projects or services in the communities and are factors which the Board can consider both in support of economic development, 4 Pa.C.S. §1325(c)(2), and to mitigate costs of meeting the increased demand for public health care, child care, public transportation, affordable housing and social services. 4 Pa.C.S. §1325(c)(9).

HSP/Sugarhouse commits to providing a charitable contribution each year to the Sugarhouse Foundation in an amount equal to 2½ percent of its annual pre-tax income up to an annual amount of \$3 million.

Philadelphia Entertainment/Foxwoods has committed to hiring and training local applicants to fill 955 of its new jobs at the facility, and to work with the Philadelphia Opportunities Industrialization Center and Community Self Empowerment Employment Programs for job training. They have committed to set up and fund a Special Services District to mitigate impacts to those impacted by the casino, but no firm funding arrangement is in place, to utilize union labor in the construction of the project, to fund the traffic improvements in Phase I and a fair share of the improvements proposed for Phase II, and to provide public access to the Delaware river at the Foxwoods location.

Finally and significantly, over 42% of the Foxwoods project is owned by Washington Philadelphia Community Charities, LP. Foxwoods, through the Washington Charities, commits that 42% of the profits of the Foxwoods Philadelphia project will be used for charitable purposes with priority given to charities whose mission is to assist the education and benefit of disadvantaged children. This amount is estimated to be approximately \$300 million over a ten year period.

Keystone/Trump Street has entered into a Community Benefits Agreement with the Tioga United and Allegheny West foundation which provides for an up-front \$2.5 million contribution to the Community Development Foundation (CDF), to annually pay between \$1 million and \$3.5 million to the CDF, to contribute \$1.5 million to fund school renovations, upgrades and scholarships; and to endeavor to fill and maintain 75% of its new jobs with impacted community residents and 90% of those jobs with Philadelphia residents.

PNK/Pinnacle has not made any binding commitments to fund any public or private entity if licensed. PNK has stated it advised local citizen groups that it intends to be a good corporate citizen including the participation in community and charitable involvement in the markets and communities it serves. However, when asked during the testimony of the November 15, 2006 final licensing hearing about community commitments, a PNK representative stated that community commitments are something you look at once you are open and profitable and then it is easier to put a number of it. See 11/15/06 Transcript at pp. 144-45. Thus, community commitments, contrary to some other applicants, did not exist in any quantifiable amount at the time of the hearing.

Riverwalk committed to establishing a foundation and an equity fund as vehicles for funding programs to benefit local charities, community organizations and business enterprises. The primary funding of these efforts comes from a commitment to donate 2.5% annually of Riverwalk's profits up to \$3 million per year and the Pennsylvania Partnership Group's commitment to irrevocably donate 20% of its net profits.¹⁵ In addition, Riverwalk, in connection with its lease of its property from the Penn's Landing Corporation, represents it has made other community commitments including funding certain traffic study improvements, incremental costs of police protection as a result of Riverwalk's operations, costs of emergency services to support Riverwalk's operations, funding approximately \$2 million in fine arts improvements in conjunction with the Philadelphia Arts Commission, and funding a special services district entity to mitigate the adverse impact of Riverwalk's operations on the surrounding community.

The Board finds that while all community commitments are beneficial to the surrounding communities and neighborhoods, the community commitment of Philadelphia Entertainment/Foxwoods is unsurpassed by any other applicant and weighs greatly in favor of Foxwoods. The Board finds that the type of commitment made by Philadelphia Entertainment/Foxwoods to be an indicator that Foxwoods will be a substantial and beneficial addition to the Philadelphia community.

¹⁵ Given the proposed capitalization of Riverwalk Casino as provided in Riverwalk's application, the Board questions whether this commitment will be realized. Due to the subordinated nature of Pa Partnership Group's limited partnership interest, funds for the charitable contributions may not be available until the retirement of preferred equity interests, absent borrowing funds against future distribution. Evidence established that this could be a five year period. Thus, Riverwalk has not demonstrated to the Board's satisfaction by clear and convincing evidence that the funding commitment will produce timely benefits to the community in relation to the commitments of other applicants.

D. Diversity Plans

Each of the applicants has presented a good faith plan to recruit, train and upgrade diversity in all employment classifications. No evidence has been presented to suggest that any applicant does not have the required, good-faith diversity plan or that it has failed to support diversity in other business endeavors.

E. History of Developing Tourism Facilities Ancillary To Gaming

The five applicants each have varying degrees of success in developing tourism facilities ancillary to gaming.

HSP/Sugarhouse, as a new entity has not previously developed tourism facilities ancillary to gaming. Various principals of HSP, though, have extensive experience and histories of developing and managing tourism facilities. Principal Neil Bloom has been intimately involved in the development of casinos and a resort in the Niagara Falls region, as well as in real estate investment and development projects. Principal Daniel Keating has extensive experience in real estate development including construction of casino resort locations.

Philadelphia Entertainment/Foxwoods, through its Connecticut property has developed three resort hotels and is in the process of building a fourth, and has established entertainment and meeting venues at that site to provide amenities besides gaming. Additionally, with its American Indian heritage, the Mashantucket Pequot Tribal Nation has built a \$193 million Native American Museum and Research Center, and sponsors an annual Native American festival.

Keystone/TrumpStreet as a new entity has not previously developed tourism facilities ancillary to gaming. Various principals of Keystone, including Trump

Entertainment Resorts has developed or owns a number of tourist properties including three Atlantic City casinos.

PNK/Pinnacle maintains, and the records supports, that its various gaming properties provide a number of amenities including hotel and spa facilities, golf course and entertainment venues which make the Pinnacle gaming facilities actual tourist destinations and not simply gaming facilities.

Riverwalk is a new entity and therefore has no history of developing tourism ancillary to gaming. However, Robert Earl, a principal in BHM Gaming Opportunities (the general partner of the management company for Riverwalk) has extensive experience in developing tourism facilities around the world involving restaurant and show venues including the Hardrock Café and Planet Hollywood brands which are known as tourist attractions around the world.

F. Record of Applicant in Meeting Community Commitments

The record of the applicant in meeting community commitments to local agencies, community-based organizations and employees in other locations is a factor which the Board may consider in assessing and evaluating the applicants. 4 Pa. C.S. §1325 (c)(8).

HSP/Sugarhouse as a new entity having no prior existence has no prior history of meeting community commitments. HSP's principals have produced evidence of significant commitments, too voluminous to list, including to educational, social, civic and charitable organizations including well over \$20 million by the Bluhm family; by the Falls Management Company of which Neil Bloom is Chairman; by Robert Potamkin

which has through the Potamkin Foundation contributed over \$12 million to charitable causes; and by Daniel Keating, William Lamb, Peter DePaul and Richard Sprague.

Philadelphia Entertainment/Foxwoods, as a new entity, has no history of meeting community commitments. The Tribal Nation however, has a substantial history of providing for the community including \$1 million to a Connecticut library, \$10 million to the Smithsonian Institute, funds for a health clinic in Haiti, donations of \$750,000 to educational institutions, over \$500,000 annually for the United Way and other contributions for Special Olympics, Hurricane relief, and other charitable causes.

Keystone/TrumpStreet as a new entity has not met prior commitments. However, it has been the longstanding practice of Keystone's Trump affiliates in Atlantic City to donate excess food to the Atlantic City Rescue Mission and the Atlantic City Food Bank. In addition, the Trump organizations in Atlantic City are heavily involved with the United Way of Atlantic County, soliciting contributions of time and money from all levels of the organizations, and from the organizations themselves. In 2002, financial contributions reached their peak, totaling approximately \$710,000. Also, prior to the issuance of a riverboat license to Trump Indiana, Inc., another Trump affiliate of Keystone, a development agreement was negotiated and executed with the host community, Gary, Indiana. Under the Indiana development agreement, Trump Indiana, Inc. contributed approximately \$1 million in scholarships and endowments to local organizations.

PNK/Pinnacle has established its position as a good corporate citizen and supporter of the communities it serves. The Pinnacle brand has supported a variety of

community events and has supported hurricane disaster relief efforts as well as children, seniors, health and other charitable causes.

Riverwalk as a new entity has no history of meeting community commitments. Individuals who possess ownership stakes in the project do have significant histories of supporting communities and the education, social service and charities serving a variety of communities. Willie F. Johnson, C. Patrick McKoy, John Tipton, Dennis Cook, Robert Earl and Douglas P. Teitelbaum have established themselves as individuals who have not only given monetarily to educational institutions and funds, social service agencies but also have given their time to establish and support these programs.

G. Potential Adverse Effects

As stated above, traffic concerns are the primary identified adverse affect that each project will bring to Philadelphia. While increases in traffic cannot be avoided, their impact can be mitigated through roadway and intersection modifications. The assurance of such modifications will be addressed through conditions of the license consistent with the input of the traffic and planning engineers who provided input to the Board during the licensing review and hearing process.

The Board also recognizes potential adverse effects of gaming in terms of gambling addictions. This is an issue which will arise no matter who the licensee is or where the project is located. Therefore, the Board believes the most appropriate way to deal with this potential effect is through the strong enforcement of a compulsive gambling plan to be established and monitored by the Board through conditions of licensure.

Finally, in terms of potential adverse effects, the Board notes the nature and amount of public comment in support and in opposition to the proposed projects. Overall, the proportion of public support and opposition to the various projects was relatively constant between the properties although the amount of public comment in total was higher for Keystone/TrumpStreet and Philadelphia Entertainment/Foxwoods projects. The overall quantity of comment both oral and written was lower for the North Delaware Avenue area.

The Board notes that the opposition groups and individuals can be divided into two categories: those who oppose specific projects for identifiable reasons and those who simply oppose gaming on moral grounds. The concerns of the former groups are taken into account by the Board with respect to the specific concerns raised. As to the second group, *i.e.* those who simply oppose gaming, the Board is obligated to follow the mandates of the Act which directs the establishment of gaming facilities. The General Assembly has, through the enactment of the Pennsylvania Race Horse Development and Gaming Act, already established the policy in this Commonwealth that gaming establishments, as outlined in the Act, will be licensed. Included within this mandate is the establishment of two facilities in the city of first class, Philadelphia. The Board's duty is to award those two licenses to two applicants if it finds, in its sole discretion, that the applicants are eligible and suitable under the criteria of the Act. The Board will not and indeed cannot countermand the intent and will of the General Assembly by refusing to issue licenses based upon those who oppose the spirit of the validly enacted statute.

As to those members of the public who opposed specific projects for other specified reasons, the majority of reasons included the affects of traffic and the proximity

of the projects to neighborhoods. The Board cannot eliminate traffic and cannot avoid all impacts on the local neighborhoods. The Board finds, however, that those adverse effects can be minimized through roadway improvements and site selections which provide buffers from residential areas, while at the same time providing substantial benefits for the community in terms of jobs, infrastructure improvements and infusions of monies to social needs. This is the case with respect to the Foxwoods and Trump Street projects.¹⁶ As noted above, the Board finds that Interstate 95 provides a buffer to the neighborhoods. Trump Street does not benefit from such an advantage with respect to separation from the neighborhoods. Likewise, the substantial community commitments of Foxwoods will provide tremendous benefit the neighborhood communities. In sum, the Board believes based upon the evidence presented that a balance can be achieved in which the benefits to the public obtained through the gaming industry will offset and compensate for any negative effects.

H. Record of Applicant in Complying With Employment and Wage Laws

The Board has not been presented with any credible evidence demonstrating any significant difference among the applicants with respect to the applicants' records regarding compliance with Federal, State and local discrimination, wage and hour, disability and occupational and environmental health and safety laws; State and local labor relations and employment laws, or the applicants' records in dealing with its employees and their representatives at other locations. *See* 4 Pa.C.S. §1325(10)(11). There being no evidence of record sufficient to establish that any one applicant is

¹⁶ This also applies to the other applicants but to a much lesser degree. Foxwoods and Trump Street, as the applicants generating the majority of public comment on the traffic issue are the focus of this discussion.

appreciably better as to this factor, the Board does not find that any applicant will fulfill the requirements of these laws in any substantial or appreciably better manner than any other applicant. Accordingly, this factor for consideration, while examined by the Board, does not lead the Board to find that one applicant is more suitable for licensure than another based upon these criteria.

I. Other Matters

The Board also notes that despite inquiry by the Board during the Riverwalk hearing, the Board did not received clarification to its satisfaction as to the ownership structure of Riverwalk or as to who had control of the Riverwalk project. Although the ownership structure appeared to be set up as 51% owned by local Philadelphians, many of whom are minorities, and 49% owned by BHM Gaming Opportunities, it was not clear to the Board that the group of Philadelphians actually had control over the Riverwalk project. In fact, testimony appeared to establish that the 49% owner actually had control over the project and that the 51% minority ownership did not have active control to the degree originally presented to the Board. See Riverwalk hearing transcript (11/13/06) at pp. 93-114. While there was minority ownership and purportedly to a 51% level, the evidence did not demonstrate that that ownership brought with it control as would be expected with a 51 % interests and therefore, the level of minority ownership does not differentiate this project from the minority passive investor ownership of other applicants. As indicated in the findings of fact above, the control over the day to day operations and many of the other decisions regarding the project was held by an executive committee which was controlled by BHM Gaming Opportunities. Because of this lack of clarity of ownership and control, the Board was not convinced